

AMENDED IN SENATE JUNE 11, 2012

AMENDED IN SENATE JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 805**

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**Introduced by Assembly Member Torres**

February 17, 2011

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An act to add Part 5 (commencing with Section 4000) to Division 4 of, and to repeal Title 6 (commencing with Section 1350) of Part 4 of Division 2 of, the Civil Code, relating to common interest developments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 805, as amended, Torres. Common interest developments.

Existing law, the Davis-Stirling Common Interest Development Act defines and regulates common interest developments.

This bill, on and after January 1, 2014, would comprehensively reorganize and recodify the Davis-Stirling Common Interest Development Act. The bill would also revise and recast provisions regarding notices and their delivery, standardize terminology, establish guidelines on the relative authority of governing documents, and establish a single procedure for amendment of a common interest declaration. The bill would guarantee the right of an owner of a separate interest to make changes in that separate interest, as specified, in a common interest development other than a condominium project, in which that right currently exists. The bill would establish an express list of conflicts of interest that may disqualify members of a board of directors of an association that manages a common interest development from voting on certain matters. The bill would also, among other things, revise provisions related to elections and voting, establish standards for

the retention of records, and broaden the requirement that liens recorded by the association in error be released.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code is repealed.

SEC. 2. Part 5 (commencing with Section 4000) is added to Division 4 of the Civil Code, to read:

## PART 5. COMMON INTEREST DEVELOPMENTS

### CHAPTER 1. GENERAL PROVISIONS

#### Article 1. Preliminary Provisions

4000. This part shall be known and may be cited as the Davis-Stirling Common Interest Development Act. In a provision of this part, the part may be referred to as the act.

4005. Division, part, title, chapter, and article headings do not in any manner affect the scope, meaning, or intent of this act.

4010. Nothing in the act that added this part shall be construed to invalidate a document prepared or action taken before January 1, 2014, if the document or action was proper under the law governing common interest developments at the time that the document was prepared or the action was taken. For the purposes of this section, “document” does not include a governing document.

4020. Unless a contrary intent is clearly expressed, a local zoning ordinance is construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless of the form of the common interest development.

4035. (a) If a provision of this act requires that a document be delivered to an association, the document shall be delivered to the person designated in the annual policy statement, prepared pursuant to Section 5310, to receive documents on behalf of the association. If no person has been designated to receive documents, the document shall be delivered to the president or secretary of the association.

1 (b) A document delivered pursuant to this section may be  
2 delivered by any of the following methods:

3 (1) By e-mail, facsimile, or other electronic means, if the  
4 association has assented to that method of delivery.

5 (2) By personal delivery, if the association has assented to that  
6 method of delivery. If the association accepts a document by  
7 personal delivery it shall provide a written receipt acknowledging  
8 delivery of the document.

9 4040. (a) If a provision of this act requires that an association  
10 deliver a document by “individual delivery” or “individual notice,”  
11 the document shall be delivered by one of the following methods:

12 (1) First-class mail, postage prepaid, registered or certified mail,  
13 express mail, or overnight delivery by an express service carrier.  
14 The document shall be addressed to the recipient at the address  
15 last shown on the books of the association.

16 (2) E-mail, facsimile, or other electronic means, if the recipient  
17 has consented, in writing, to that method of delivery. The consent  
18 may be revoked, in writing, by the recipient.

19 (b) Upon receipt of a request by a member, pursuant to Section  
20 5260, identifying a secondary address for delivery of notices of  
21 the following types, the association shall deliver an additional copy  
22 of those notices to the secondary address identified in the request:

23 (1) The documents to be delivered to the member pursuant to  
24 Article 7 (commencing with Section 5300) of Chapter 6.

25 (2) The documents to be delivered to the member pursuant to  
26 Article 2 (commencing with Section 5650) of Chapter 8, and  
27 Section 5710.

28 (c) For the purposes of this section, an unrecorded provision of  
29 the governing documents providing for a particular method of  
30 delivery does not constitute agreement by a member to that method  
31 of delivery.

32 4045. (a) If a provision of this act requires “general delivery”  
33 or “general notice,” the document shall be provided by one or more  
34 of the following methods:

35 (1) Any method provided for delivery of an individual notice  
36 pursuant to Section 4040.

37 (2) Inclusion in a billing statement, newsletter, or other  
38 document that is delivered by one of the methods provided in this  
39 section.

1 (3) Posting the printed document in a prominent location that  
2 is accessible to all members, if the location has been designated  
3 for the posting of general notices by the association in the annual  
4 policy statement, prepared pursuant to Section 5310.

5 (4) If the association broadcasts television programming for the  
6 purpose of distributing information on association business to its  
7 members, by inclusion in the programming.

8 (b) Notwithstanding subdivision (a), if a member requests to  
9 receive general notices by individual delivery, all general notices  
10 to that member, given under this section, shall be delivered  
11 pursuant to Section 4040. The option provided in this subdivision  
12 shall be described in the annual policy statement, prepared pursuant  
13 to Section 5310.

14 4050. (a) This section governs the delivery of a document  
15 pursuant to this act.

16 (b) If a document is delivered by mail, delivery is deemed to  
17 be complete on deposit into the United States mail.

18 (c) If a document is delivered by electronic means, delivery is  
19 complete at the time of transmission.

20 4055. If the association or a member has consented to receive  
21 information by electronic delivery, and a provision of this act  
22 requires that the information be in writing, that requirement is  
23 satisfied if the information is provided in an electronic record  
24 capable of retention by the recipient at the time of receipt. An  
25 electronic record is not capable of retention by the recipient if the  
26 sender or its information processing system inhibits the ability of  
27 the recipient to print or store the electronic record.

28 4065. If a provision of this act requires that an action be  
29 approved by a majority of all members, the action shall be approved  
30 or ratified by an affirmative vote of a majority of the votes entitled  
31 to be cast.

32 4070. If a provision of this act requires that an action be  
33 approved by a majority of a quorum of the members, the action  
34 shall be approved or ratified by an affirmative vote of a majority  
35 of the votes represented and voting at a duly held meeting at which  
36 a quorum is present, which affirmative votes also constitute a  
37 majority of the required quorum.

Article 2. Definitions

4075. The definitions in this article govern the construction of this act.

4076. “Annual budget report” means the report described in Section 5300.

4078. “Annual policy statement” means the statement described in Section 5310.

4080. “Association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

4085. “Board” means the board of directors of the association.

4090. “Board meeting” means either of the following:

(a) A congregation, at the same time and place, of a sufficient number of directors to establish a quorum of the board, to hear, discuss, or deliberate upon any item of business that is within the authority of the board.

(b) A teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this act. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one ~~member of the board~~ *director* shall be present at that location. Participation by directors in a teleconference meeting constitutes presence at that meeting as long as all directors participating are able to hear one another, as well as members of the association speaking on matters before the board.

4095. (a) “Common area” means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(b) Notwithstanding subdivision (a), in a planned development described in subdivision (b) of Section 4175, the common area may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

1     4100. “Common interest development” means any of the  
2 following:

- 3     (a) A community apartment project.
- 4     (b) A condominium project.
- 5     (c) A planned development.
- 6     (d) A stock cooperative.

7     4105. “Community apartment project” means a development  
8 in which an undivided interest in land is coupled with the right of  
9 exclusive occupancy of any apartment located thereon.

10    4110. (a) “Community service organization or similar entity”  
11 means a nonprofit entity, other than an association, that is organized  
12 to provide services to residents of the common interest  
13 development or to the public in addition to the residents, to the  
14 extent community common area or facilities are available to the  
15 public.

16    (b) “Community service organization or similar entity” does  
17 not include an entity that has been organized solely to raise moneys  
18 and contribute to other nonprofit organizations that are qualified  
19 as tax exempt under Section 501(c)(3) of the Internal Revenue  
20 Code and that provide housing or housing assistance.

21    4120. “Condominium plan” means a plan described in Section  
22 4285.

23    4125. (a) A “condominium project” means a real property  
24 development consisting of condominiums.

25    (b) A condominium consists of an undivided interest in common  
26 in a portion of real property coupled with a separate interest in  
27 space called a unit, the boundaries of which are described on a  
28 recorded final map, parcel map, or condominium plan in sufficient  
29 detail to locate all boundaries thereof. The area within these  
30 boundaries may be filled with air, earth, water, or fixtures, or any  
31 combination thereof, and need not be physically attached to land  
32 except by easements for access and, if necessary, support. The  
33 description of the unit may refer to (1) boundaries described in the  
34 recorded final map, parcel map, or condominium plan, (2) physical  
35 boundaries, either in existence, or to be constructed, such as walls,  
36 floors, and ceilings of a structure or any portion thereof, (3) an  
37 entire structure containing one or more units, or (4) any  
38 combination thereof.

39    (c) The portion or portions of the real property held in undivided  
40 interest may be all of the real property, except for the separate

1 interests, or may include a particular three-dimensional portion  
2 thereof, the boundaries of which are described on a recorded final  
3 map, parcel map, or condominium plan. The area within these  
4 boundaries may be filled with air, earth, water, or fixtures, or any  
5 combination thereof, and need not be physically attached to land  
6 except by easements for access and, if necessary, support.

7 (d) An individual condominium within a condominium project  
8 may include, in addition, a separate interest in other portions of  
9 the real property.

10 4130. "Declarant" means the person or group of persons  
11 designated in the declaration as declarant, or if no declarant is  
12 designated, the person or group of persons who sign the original  
13 declaration or who succeed to special rights, preferences, or  
14 privileges designated in the declaration as belonging to the signator  
15 of the original declaration.

16 4135. "Declaration" means the document, however  
17 denominated, that contains the information required by Sections  
18 4250 and 4255.

19 4140. "Director" means a natural person who serves on the  
20 board.

21 4145. (a) "Exclusive use common area" means a portion of  
22 the common area designated by the declaration for the exclusive  
23 use of one or more, but fewer than all, of the owners of the separate  
24 interests and which is or will be appurtenant to the separate interest  
25 or interests.

26 (b) Unless the declaration otherwise provides, any shutters,  
27 awnings, window boxes, doorsteps, stoops, porches, balconies,  
28 patios, exterior doors, doorframes, and hardware incident thereto,  
29 screens and windows or other fixtures designed to serve a single  
30 separate interest, but located outside the boundaries of the separate  
31 interest, are exclusive use common area allocated exclusively to  
32 that separate interest.

33 (c) Notwithstanding the provisions of the declaration, internal  
34 and external telephone wiring designed to serve a single separate  
35 interest, but located outside the boundaries of the separate interest,  
36 ~~are~~ *is* exclusive use common area allocated exclusively to that  
37 separate interest.

38 4148. "General notice" means the delivery of a document  
39 pursuant to Section 4045.

1 4150. “Governing documents” means the declaration and any  
2 other documents, such as bylaws, operating rules, articles of  
3 incorporation, or articles of association, which govern the operation  
4 of the common interest development or association.

5 4153. “Individual notice” means the delivery of a document  
6 pursuant to Section 4040.

7 4155. “Item of business” means any action within the authority  
8 of the board, except those actions that the board has validly  
9 delegated to any other person or persons, managing agent, officer  
10 of the association, or committee of the board comprising less than  
11 a quorum of the board.

12 4158. (a) A “managing agent” is a person who, for  
13 compensation or in expectation of compensation, exercises control  
14 over the assets of a common interest development.

15 (b) A “managing agent” does not include any of the following:

16 (1) A regulated financial institution operating within the normal  
17 course of its regulated business practice.

18 (2) An attorney at law acting within the scope of the attorney’s  
19 license.

20 4160. “Member” means an owner of a separate interest.

21 4170. “Person” means a natural person, corporation,  
22 government or governmental subdivision or agency, business trust,  
23 estate, trust, partnership, limited liability company, association,  
24 or other entity.

25 4175. “Planned development” means a real property  
26 development other than a community apartment project, a  
27 condominium project, or a stock cooperative, having either or both  
28 of the following features:

29 (a) Common area that is owned either by an association or in  
30 common by the owners of the separate interests who possess  
31 appurtenant rights to the beneficial use and enjoyment of the  
32 common area.

33 (b) Common area and an association that maintains the common  
34 area with the power to levy assessments that may become a lien  
35 upon the separate interests in accordance with Article 2  
36 (commencing with Section 5650) of Chapter 8.

37 4177. “Reserve accounts” means both of the following:

38 (a) Moneys that the board has identified for use to defray the  
39 future repair or replacement of, or additions to, those major  
40 components that the association is obligated to maintain.



1 (b) The funds received, and not yet expended or disposed of,  
2 from either a compensatory damage award or settlement to an  
3 association from any person for injuries to property, real or  
4 personal, arising from any construction or design defects. These  
5 funds shall be separately itemized from funds described in  
6 subdivision (a).

7 4178. "Reserve account requirements" means the estimated  
8 funds that the board has determined are required to be available  
9 at a specified point in time to repair, replace, or restore those major  
10 components that the association is obligated to maintain.

11 4185. (a) "Separate interest" has the following meanings:

12 (1) In a community apartment project, "separate interest" means  
13 the exclusive right to occupy an apartment, as specified in Section  
14 4105.

15 (2) In a condominium project, "separate interest" means a  
16 separately owned unit, as specified in Section 4125.

17 (3) In a planned development, "separate interest" means a  
18 separately owned lot, parcel, area, or space.

19 (4) In a stock cooperative, "separate interest" means the  
20 exclusive right to occupy a portion of the real property, as specified  
21 in Section 4190.

22 (b) Unless the declaration or condominium plan, if any exists,  
23 otherwise provides, if walls, floors, or ceilings are designated as  
24 boundaries of a separate interest, the interior surfaces of the  
25 perimeter walls, floors, ceilings, windows, doors, and outlets  
26 located within the separate interest are part of the separate interest  
27 and any other portions of the walls, floors, or ceilings are part of  
28 the common area.

29 (c) The estate in a separate interest may be a fee, a life estate,  
30 an estate for years, or any combination of the foregoing.

31 4190. (a) "Stock cooperative" means a development in which  
32 a corporation is formed or availed of, primarily for the purpose of  
33 holding title to, either in fee simple or for a term of years, improved  
34 real property, and all or substantially all of the shareholders of the  
35 corporation receive a right of exclusive occupancy in a portion of  
36 the real property, title to which is held by the corporation. The  
37 owners' interest in the corporation, whether evidenced by a share  
38 of stock, a certificate of membership, or otherwise, shall be deemed  
39 to be an interest in a common interest development and a real estate

1 development for purposes of subdivision (f) of Section 25100 of  
2 the Corporations Code.

3 (b) A “stock cooperative” includes a limited equity housing  
4 cooperative which is a stock cooperative that meets the criteria of  
5 Section 817.

6  
7 CHAPTER 2. APPLICATION OF ACT  
8

9 4200. This act applies and a common interest development is  
10 created whenever a separate interest coupled with an interest in  
11 the common area or membership in the association is, or has been,  
12 conveyed, provided all of the following are recorded:

13 (a) A declaration.

14 (b) A condominium plan, if any exists.

15 (c) A final map or parcel map, if Division 2 (commencing with  
16 Section 66410) of Title 7 of the Government Code requires the  
17 recording of either a final map or parcel map for the common  
18 interest development.

19 4201. Nothing in this act may be construed to apply to a real  
20 property development that does not contain common area. This  
21 section is declaratory of existing law.

22 4202. (a) The following provisions do not apply to a common  
23 interest development that is limited to industrial or commercial  
24 uses by zoning or by a declaration of covenants, conditions, and  
25 restrictions that has been recorded in the official records of each  
26 county in which the common interest development is located:

27 (1) Section 4275.

28 (2) Article 5 (commencing with Section 4340) of Chapter 3.

29 (3) Article 2 (commencing with Section 4525), and Article 3  
30 (commencing with Section 4575), of Chapter 4.

31 (4) Section 4600.

32 (5) Section 4740.

33 (6) Section 4765.

34 (7) Sections 5300, 5305, 5565, and 5810, and paragraph (7) of  
35 subdivision (a) of Section 5310.

36 (8) Sections 5500 through 5560, inclusive.

37 (9) Subdivision (b) of Section 5600.

38 (10) Subdivision (b) of Section 5605.

39 (b) The Legislature finds that the provisions listed in subdivision

40 (a) are appropriate to protect purchasers in residential common

1 interest developments, however, the provisions may not be  
2 necessary to protect purchasers in commercial or industrial  
3 developments since the application of those provisions could result  
4 in unnecessary burdens and costs for these types of developments.

5  
6 CHAPTER 3. GOVERNING DOCUMENTS

7  
8 Article 1. General Provisions

9  
10 4205. (a) To the extent of any inconsistency between the  
11 governing documents and the law, the law controls.

12 (b) To the extent of any inconsistency between the articles of  
13 incorporation and the declaration, the declaration controls.

14 (c) To the extent of any inconsistency between the bylaws and  
15 the articles of incorporation or declaration, the articles of  
16 incorporation or declaration control.

17 (d) To the extent of any inconsistency between the operating  
18 rules and the bylaws, articles of incorporation, or declaration, the  
19 bylaws, articles of incorporation, or declaration control.

20 4210. In order to facilitate the collection of regular assessments,  
21 special assessments, transfer fees as authorized by Sections 4530,  
22 4575, and 4580, and similar charges, the board is authorized to  
23 record a statement or amended statement identifying relevant  
24 information for the association. This statement may include any  
25 or all of the following information:

26 (a) The name of the association as shown in the declaration or  
27 the current name of the association, if different.

28 (b) The name and address of a managing agent or treasurer of  
29 the association or other individual or entity authorized to receive  
30 assessments and fees imposed by the association.

31 (c) A daytime telephone number of the authorized party  
32 identified in subdivision (b) if a telephone number is available.

33 (d) A list of separate interests subject to assessment by the  
34 association, showing the assessor's parcel number or legal  
35 description, or both, of the separate interests.

36 (e) The recording information identifying the declaration  
37 governing the association.

38 (f) If an amended statement is being recorded, the recording  
39 information identifying the prior statement or statements which  
40 the amendment is superseding.

1     4215. Any deed, declaration, or condominium plan for a  
2 common interest development shall be liberally construed to  
3 facilitate the operation of the common interest development, and  
4 its provisions shall be presumed to be independent and severable.  
5 Nothing in Article 3 (commencing with Section 715) of Chapter  
6 2 of Title 2 of Part 1 of Division 2 shall operate to invalidate any  
7 provisions of the governing documents.

8     4220. In interpreting deeds and condominium plans, the existing  
9 physical boundaries of a unit in a condominium project, when the  
10 boundaries of the unit are contained within a building, or of a unit  
11 reconstructed in substantial accordance with the original plans  
12 thereof, shall be conclusively presumed to be its boundaries rather  
13 than the metes and bounds expressed in the deed or condominium  
14 plan, if any exists, regardless of settling or lateral movement of  
15 the building and regardless of minor variance between boundaries  
16 shown on the plan or in the deed and those of the building.

17     4225. (a) No declaration or other governing document shall  
18 include a restrictive covenant in violation of Section 12955 of the  
19 Government Code.

20     (b) Notwithstanding any other provision of law or provision of  
21 the governing documents, the board, without approval of the  
22 members, shall amend any declaration or other governing document  
23 that includes a restrictive covenant prohibited by this section to  
24 delete the restrictive covenant, and shall restate the declaration or  
25 other governing document without the restrictive covenant but  
26 with no other change to the declaration or governing document.

27     (c) If the declaration is amended under this section, the board  
28 shall record the restated declaration in each county in which the  
29 common interest development is located. If the articles of  
30 incorporation are amended under this section, the board shall file  
31 a certificate of amendment with the Secretary of State pursuant to  
32 Section 7814 of the Corporations Code.

33     (d) If after providing written notice to an association, pursuant  
34 to Section 4035, requesting that the association delete a restrictive  
35 covenant that violates subdivision (a), and the association fails to  
36 delete the restrictive covenant within 30 days of receiving the  
37 notice, the Department of Fair Employment and Housing, a city  
38 or county in which a common interest development is located, or  
39 any person may bring an action against the association for

1 injunctive relief to enforce subdivision (a). The court may award  
2 attorney's fees to the prevailing party.

3 4230. (a) Notwithstanding any provision of the governing  
4 documents to the contrary, the board may, after the developer has  
5 completed construction of the development, has terminated  
6 construction activities, and has terminated marketing activities for  
7 the sale, lease, or other disposition of separate interests within the  
8 development, adopt an amendment deleting from any of the  
9 governing documents any provision which is unequivocally  
10 designed and intended, or which by its nature can only have been  
11 designed or intended, to facilitate the developer in completing the  
12 construction or marketing of the development. However, provisions  
13 of the governing documents relative to a particular construction  
14 or marketing phase of the development may not be deleted under  
15 the authorization of this subdivision until that construction or  
16 marketing phase has been completed.

17 (b) The provisions which may be deleted by action of the board  
18 shall be limited to those which provide for access by the developer  
19 over or across the common area for the purposes of (1) completion  
20 of construction of the development, and (2) the erection,  
21 construction, or maintenance of structures or other facilities  
22 designed to facilitate the completion of construction or marketing  
23 of separate interests.

24 (c) At least 30 days prior to taking action pursuant to subdivision  
25 (a), the board shall deliver to all members, by individual delivery,  
26 pursuant to Section 4040, (1) a copy of all amendments to the  
27 governing documents proposed to be adopted under subdivision  
28 (a), and (2) a notice of the time, date, and place the board will  
29 consider adoption of the amendments. The board may consider  
30 adoption of amendments to the governing documents pursuant to  
31 subdivision (a) only at a meeting that is open to all members, who  
32 shall be given opportunity to make comments thereon. All  
33 deliberations of the board on any action proposed under subdivision  
34 (a) shall only be conducted in an open meeting.

35 (d) The board may not amend the governing documents pursuant  
36 to this section without the approval of a majority of a quorum of  
37 the members, pursuant to Section 4070. For the purposes of this  
38 section, "quorum" means more than 50 percent of the members  
39 who own no more than two separate interests in the development.

1 4235. (a) Notwithstanding any other provision of law or  
2 provision of the governing documents, if the governing documents  
3 include a reference to a provision of the Davis-Stirling Common  
4 Interest Development Act that was repealed and continued in a  
5 new provision by the act that added this section, the board may  
6 amend the governing documents, solely to correct the  
7 cross-reference, by adopting a board resolution that shows the  
8 correction. Member approval is not required in order to adopt a  
9 resolution pursuant to this section.

10 (b) A declaration that is corrected under this section may be  
11 restated in corrected form and recorded, provided that a copy of  
12 the board resolution authorizing the corrections is recorded along  
13 with the restated declaration.

14  
15 Article 2. Declaration  
16

17 4250. (a) A declaration, recorded on or after January 1, 1986,  
18 shall contain a legal description of the common interest  
19 development, and a statement that the common interest  
20 development is a community apartment project, condominium  
21 project, planned development, stock cooperative, or combination  
22 thereof. The declaration shall additionally set forth the name of  
23 the association and the restrictions on the use or enjoyment of any  
24 portion of the common interest development that are intended to  
25 be enforceable equitable servitudes.

26 (b) The declaration may contain any other matters the declarant  
27 or the members consider appropriate.

28 4255. (a) If a common interest development is located within  
29 an airport influence area, a declaration, recorded after January 1,  
30 2004, shall contain the following statement:

31  
32 NOTICE

33 "NOTICE OF AIRPORT IN VICINITY

34 This property is presently located in the vicinity of an airport,  
35 within what is known as an airport influence area. For that reason,  
36 the property may be subject to some of the annoyances or  
37 inconveniences associated with proximity to airport operations  
38 (for example: noise, vibration, or odors). Individual sensitivities  
39 to those annoyances can vary from person to person. You may  
40 wish to consider what airport annoyances, if any, are associated

1 with the property before you complete your purchase and determine  
2 whether they are acceptable to ~~you~~: *you*.”

3  
4 (b) For purposes of this section, an “airport influence area,” also  
5 known as an “airport referral area,” is the area in which current or  
6 future airport-related noise, overflight, safety, or airspace protection  
7 factors may significantly affect land uses or necessitate restrictions  
8 on those uses as determined by an airport land use commission.

9 (c) If a common interest development is within the San Francisco  
10 Bay Conservation and Development Commission jurisdiction, as  
11 described in Section 66610 of the Government Code, a declaration  
12 recorded on or after January 1, 2006, shall contain the following  
13 notice:

14  
15 **NOTICE**

16 **“NOTICE OF SAN FRANCISCO BAY CONSERVATION**  
17 **AND DEVELOPMENT COMMISSION JURISDICTION**

18 This property is located within the jurisdiction of the San  
19 Francisco Bay Conservation and Development Commission. Use  
20 and development of property within the commission’s jurisdiction  
21 may be subject to special regulations, restrictions, and permit  
22 requirements. You may wish to investigate and determine whether  
23 they are acceptable to you and your intended use of the property  
24 before you complete your ~~transaction~~: *transaction*.”

25  
26 (d) The statement in a declaration acknowledging that a property  
27 is located in an airport influence area or within the jurisdiction of  
28 the San Francisco Bay Conservation and Development Commission  
29 does not constitute a title defect, lien, or encumbrance.

30 4260. Except to the extent that a declaration provides by its  
31 express terms that it is not amendable, in whole or in part, a  
32 declaration that fails to include provisions permitting its  
33 amendment at all times during its existence may be amended at  
34 any time.

35 4265. (a) The Legislature finds that there are common interest  
36 developments that have been created with deed restrictions that  
37 do not provide a means for the members to extend the term of the  
38 declaration. The Legislature further finds that covenants and  
39 restrictions contained in the declaration, are an appropriate method  
40 for protecting the common plan of developments and to provide

1 for a mechanism for financial support for the upkeep of common  
2 area including, but not limited to, roofs, roads, heating systems,  
3 and recreational facilities. If declarations terminate prematurely,  
4 common interest developments may deteriorate and the housing  
5 supply of affordable units could be impacted adversely. The  
6 Legislature further finds and declares that it is in the public interest  
7 to provide a vehicle for extending the term of the declaration if  
8 the extension is approved by a majority of all members, pursuant  
9 to Section 4065.

10 (b) A declaration that specifies a termination date, but that  
11 contains no provision for extension of the termination date, may  
12 be extended, before its termination date, by the approval of  
13 members pursuant to Section 4270.

14 (c) No single extension of the terms of the declaration made  
15 pursuant to this section shall exceed the initial term of the  
16 declaration or 20 years, whichever is less. However, more than  
17 one extension may occur pursuant to this section.

18 4270. (a) A declaration may be amended pursuant to the  
19 declaration or this act. Except as provided in Section 4275, an  
20 amendment is effective after all of the following requirements  
21 have been met:

22 (1) The amendment has been approved by the percentage of  
23 members required by the declaration and any other person whose  
24 approval is required by the declaration.

25 (2) That fact has been certified in a writing executed and  
26 acknowledged by the officer designated in the declaration or by  
27 the association for that purpose, or if no one is designated, by the  
28 president of the association.

29 (3) The amendment has been recorded in each county in which  
30 a portion of the common interest development is located.

31 (b) If the declaration does not specify the percentage of members  
32 who must approve an amendment of the declaration, an amendment  
33 may be approved by a majority of all members, pursuant to Section  
34 4065.

35 4275. (a) If in order to amend a declaration, the declaration  
36 requires members having more than 50 percent of the votes in the  
37 association, in a single class voting structure, or members having  
38 more than 50 percent of the votes in more than one class in a voting  
39 structure with more than one class, to vote in favor of the  
40 amendment, the association, or any member, may petition the



1 superior court of the county in which the common interest  
2 development is located for an order reducing the percentage of the  
3 affirmative votes necessary for such an amendment. The petition  
4 shall describe the effort that has been made to solicit approval of  
5 the association members in the manner provided in the declaration,  
6 the number of affirmative and negative votes actually received,  
7 the number or percentage of affirmative votes required to effect  
8 the amendment in accordance with the existing declaration, and  
9 other matters the petitioner considers relevant to the court's  
10 determination. The petition shall also contain, as exhibits thereto,  
11 copies of all of the following:

- 12 (1) The governing documents.
- 13 (2) A complete text of the amendment.
- 14 (3) Copies of any notice and solicitation materials utilized in  
15 the solicitation of member approvals.
- 16 (4) A short explanation of the reason for the amendment.
- 17 (5) Any other documentation relevant to the court's  
18 determination.

19 (b) Upon filing the petition, the court shall set the matter for  
20 hearing and issue an ex parte order setting forth the manner in  
21 which notice shall be given.

22 (c) The court may, but shall not be required to, grant the petition  
23 if it finds all of the following:

24 (1) The petitioner has given not less than 15 days written notice  
25 of the court hearing to all members of the association, to any  
26 mortgagee of a mortgage or beneficiary of a deed of trust who is  
27 entitled to notice under the terms of the declaration, and to the  
28 city, county, or city and county in which the common interest  
29 development is located that is entitled to notice under the terms of  
30 the declaration.

31 (2) Balloting on the proposed amendment was conducted in  
32 accordance with the governing documents, this act, and any other  
33 applicable law.

34 (3) A reasonably diligent effort was made to permit all eligible  
35 members to vote on the proposed amendment.

36 (4) Members having more than 50 percent of the votes, in a  
37 single class voting structure, voted in favor of the amendment. In  
38 a voting structure with more than one class, where the declaration  
39 requires a majority of more than one class to vote in favor of the  
40 amendment, members having more than 50 percent of the votes

1 of each class required by the declaration to vote in favor of the  
2 amendment voted in favor of the amendment.

3 (5) The amendment is reasonable.

4 (6) Granting the petition is not improper for any reason stated  
5 in subdivision (e).

6 (d) If the court makes the findings required by subdivision (c),  
7 any order issued pursuant to this section may confirm the  
8 amendment as being validly approved on the basis of the  
9 affirmative votes actually received during the balloting period or  
10 the order may dispense with any requirement relating to quorums  
11 or to the number or percentage of votes needed for approval of the  
12 amendment that would otherwise exist under the governing  
13 documents.

14 (e) Subdivisions (a) to (d), inclusive, notwithstanding, the court  
15 shall not be empowered by this section to approve any amendment  
16 to the declaration that:

17 (1) Would change provisions in the declaration requiring the  
18 approval of members having more than 50 percent of the votes in  
19 more than one class to vote in favor of an amendment, unless  
20 members having more than 50 percent of the votes in each affected  
21 class approved the amendment.

22 (2) Would eliminate any special rights, preferences, or privileges  
23 designated in the declaration as belonging to the declarant, without  
24 the consent of the declarant.

25 (3) Would impair the security interest of a mortgagee of a  
26 mortgage or the beneficiary of a deed of trust without the approval  
27 of the percentage of the mortgagees and beneficiaries specified in  
28 the declaration, if the declaration requires the approval of a  
29 specified percentage of the mortgagees and beneficiaries.

30 (f) An amendment is not effective pursuant to this section until  
31 the court order and amendment have been recorded in every county  
32 in which a portion of the common interest development is located.  
33 The amendment may be acknowledged by, and the court order and  
34 amendment may be recorded by, any person designated in the  
35 declaration or by the association for that purpose, or if no one is  
36 designated for that purpose, by the president of the association.  
37 Upon recordation of the amendment and court order, the  
38 declaration, as amended in accordance with this section, shall have  
39 the same force and effect as if the amendment were adopted in

1 compliance with every requirement imposed by the governing  
2 documents.

3 (g) Within a reasonable time after the amendment is recorded  
4 the association shall deliver to each member, by individual  
5 delivery, pursuant to Section 4040, a copy of the amendment,  
6 together with a statement that the amendment has been recorded.

7  
8 Article 3. Articles of Incorporation  
9

10 4280. (a) The articles of incorporation of an association filed  
11 with the Secretary of State shall include a statement, which shall  
12 be in addition to the statement of purposes of the corporation, that  
13 does all of the following:

14 (1) Identifies the corporation as an association formed to manage  
15 a common interest development under the Davis-Stirling Common  
16 Interest Development Act.

17 (2) States the business or corporate office of the association, if  
18 any, and, if the office is not on the site of the common interest  
19 development, states the front street and nearest cross street for the  
20 physical location of the common interest development.

21 (3) States the name and address of the association's managing  
22 agent, if any.

23 (b) The statement filed by an incorporated association with the  
24 Secretary of State pursuant to Section 8210 of the Corporations  
25 Code shall also contain a statement identifying the corporation as  
26 an association formed to manage a common interest development  
27 under the Davis-Stirling Common Interest Development Act.

28  
29 Article 4. Condominium Plan  
30

31 4285. A condominium plan shall contain all of the following:

32 (a) A description or survey map of a condominium project,  
33 which shall refer to or show monumentation on the ground.

34 (b) A three-dimensional description of a condominium project,  
35 one or more dimensions of which may extend for an indefinite  
36 distance upwards or downwards, in sufficient detail to identify the  
37 common area and each separate interest.

38 (c) A certificate consenting to the recordation of the  
39 condominium plan pursuant to this act that is signed and  
40 acknowledged as provided in Section 4290.

1     4290. (a) The certificate consenting to the recordation of a  
2 condominium plan that is required by subdivision (c) of Section  
3 4120 shall be signed and acknowledged by all of the following  
4 persons:

5     (1) The record owner of fee title to that property included in the  
6 condominium project.

7     (2) In the case of a condominium project that will terminate  
8 upon the termination of an estate for years, by all lessors and  
9 lessees of the estate for years.

10    (3) In the case of a condominium project subject to a life estate,  
11 by all life tenants and remainder interests.

12    (4) The trustee or the beneficiary of each recorded deed of trust,  
13 and the mortgagee of each recorded mortgage encumbering the  
14 property.

15    (b) Owners of mineral rights, easements, rights-of-way, and  
16 other nonpossessory interests do not need to sign the certificate.

17    (c) In the event a conversion to condominiums of a community  
18 apartment project or stock cooperative has been approved by the  
19 required number of owners, trustees, beneficiaries, and mortgagees  
20 pursuant to Section 66452.10 of the Government Code, the  
21 certificate need only be signed by those owners, trustees,  
22 beneficiaries, and mortgagees approving the conversion.

23     4295. A condominium plan may be amended or revoked by a  
24 recorded instrument that is acknowledged and signed by all the  
25 persons who, at the time of amendment or revocation, are persons  
26 whose signatures are required under Section 4290.

## 27 28                     Article 5. Operating Rules 29

30     4340. For the purposes of this article:

31     (a) “Operating rule” means a regulation adopted by the board  
32 that applies generally to the management and operation of the  
33 common interest development or the conduct of the business and  
34 affairs of the association.

35     (b) “Rule change” means the adoption, amendment, or repeal  
36 of an operating rule by the board.

37     4350. An operating rule is valid and enforceable only if all of  
38 the following requirements are satisfied:

39     (a) The rule is in writing.

1 (b) The rule is within the authority of the board conferred by  
2 law or by the declaration, articles of incorporation or association,  
3 or bylaws of the association.

4 (c) The rule is not inconsistent with governing law and the  
5 declaration, articles of incorporation or association, and bylaws  
6 of the association.

7 (d) The rule is adopted, amended, or repealed in good faith and  
8 in substantial compliance with the requirements of this article.

9 (e) The rule is reasonable.

10 4355. (a) Sections 4360 and 4365 only apply to an operating  
11 rule that relates to one or more of the following subjects:

12 (1) Use of the common area or of an exclusive use common  
13 area.

14 (2) Use of a separate interest, including any aesthetic or  
15 architectural standards that govern alteration of a separate interest.

16 (3) Member discipline, including any schedule of monetary  
17 penalties for violation of the governing documents and any  
18 procedure for the imposition of penalties.

19 (4) Any standards for delinquent assessment payment plans.

20 (5) Any procedures adopted by the association for resolution  
21 of disputes.

22 (6) Any procedures for reviewing and approving or disapproving  
23 a proposed physical change to a member's separate interest or to  
24 the common area.

25 (7) Procedures for elections.

26 (b) Sections 4360 and 4365 do not apply to the following actions  
27 by the board:

28 (1) A decision regarding maintenance of the common area.

29 (2) A decision on a specific matter that is not intended to apply  
30 generally.

31 (3) A decision setting the amount of a regular or special  
32 assessment.

33 (4) A rule change that is required by law, if the board has no  
34 discretion as to the substantive effect of the rule change.

35 (5) Issuance of a document that merely repeats existing law or  
36 the governing documents.

37 4360. (a) The board shall provide general notice pursuant to  
38 Section 4045 of a proposed rule change at least 30 days before  
39 making the rule change. The notice shall include the text of the  
40 proposed rule change and a description of the purpose and effect

1 of the proposed rule change. Notice is not required under this  
2 subdivision if the board determines that an immediate rule change  
3 is necessary to address an imminent threat to public health or safety  
4 or imminent risk of substantial economic loss to the association.

5 (b) A decision on a proposed rule change shall be made at a  
6 board meeting, after consideration of any comments made by  
7 association members.

8 (c) As soon as possible after making a rule change, but not more  
9 than 15 days after making the rule change, the board shall deliver  
10 general notice pursuant to Section 4045 of the rule change. If the  
11 rule change was an emergency rule change made under subdivision  
12 (d), the notice shall include the text of the rule change, a description  
13 of the purpose and effect of the rule change, and the date that the  
14 rule change expires.

15 (d) If the board determines that an immediate rule change is  
16 required to address an imminent threat to public health or safety,  
17 or an imminent risk of substantial economic loss to the association,  
18 it may make an emergency rule change, and no notice is required,  
19 as specified in subdivision (a). An emergency rule change is  
20 effective for 120 days, unless the rule change provides for a shorter  
21 effective period. A rule change made under this subdivision may  
22 not be readopted under this subdivision.

23 4365. (a) Members of an association owning 5 percent or more  
24 of the separate interests may call a special vote of the members to  
25 reverse a rule change.

26 (b) A special vote of the members may be called by delivering  
27 a written request to the association. Not less than 35 days nor more  
28 than 90 days after receipt of a proper request, the association shall  
29 hold a vote of the members on whether to reverse the rule change,  
30 pursuant to Article 4 (commencing with Section 5100) of Chapter  
31 6. The written request may not be delivered more than 30 days  
32 after the association gives general notice of the rule change,  
33 pursuant to Section 4045.

34 (c) For the purposes of Section 5225 of this code and Section  
35 8330 of the Corporations Code, collection of signatures to call a  
36 special vote under this section is a purpose reasonably related to  
37 the interests of the members of the association. A member request  
38 to copy or inspect the membership list solely for that purpose may  
39 not be denied on the grounds that the purpose is not reasonably  
40 related to the member's interests as a member.

1 (d) The rule change may be reversed by the affirmative vote of  
2 a majority of a quorum of the members, pursuant to Section 4070,  
3 or if the declaration or bylaws require a greater percentage, by the  
4 affirmative vote of the percentage required.

5 (e) Unless otherwise provided in the declaration or bylaws, for  
6 the purposes of this section, a member may cast one vote per  
7 separate interest owned.

8 (f) A rule change reversed under this section may not be  
9 readopted for one year after the date of the vote reversing the rule  
10 change. Nothing in this section precludes the board from adopting  
11 a different rule on the same subject as the rule change that has  
12 been reversed.

13 (g) As soon as possible after the close of voting, but not more  
14 than 15 days after the close of voting, the board shall provide  
15 general notice pursuant to Section 4045 of the results of the  
16 member vote.

17 (h) This section does not apply to an emergency rule change  
18 made under subdivision (d) of Section 4360.

19 4370. (a) This article applies to a rule change commenced on  
20 or after January 1, 2004.

21 (b) Nothing in this article affects the validity of a rule change  
22 commenced before January 1, 2004.

23 (c) For the purposes of this section, a rule change is commenced  
24 when the board takes its first official action leading to adoption of  
25 the rule change.

26  
27 CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS

28  
29 Article 1. Ownership Rights and Interests

30  
31 4500. Unless the declaration otherwise provides, in a  
32 condominium project, or in a planned development in which the  
33 common area is owned by the owners of the separate interests, the  
34 common area is owned as tenants in common, in equal shares, one  
35 for each separate interest.

36 4505. Unless the declaration otherwise provides:

37 (a) In a community apartment project and condominium project,  
38 and in those planned developments with common area owned in  
39 common by the owners of the separate interests, there are  
40 appurtenant to each separate interest nonexclusive rights of ingress,

1 egress, and support, if necessary, through the common area. The  
2 common area is subject to these rights.

3 (b) In a stock cooperative, and in a planned development with  
4 common area owned by the association, there is an easement for  
5 ingress, egress, and support, if necessary, appurtenant to each  
6 separate interest. The common area is subject to these easements.

7 4510. Except as otherwise provided in law, an order of the  
8 court, or an order pursuant to a final and binding arbitration  
9 decision, an association may not deny a member or occupant  
10 physical access to the member's or occupant's separate interest,  
11 either by restricting access through the common area to the separate  
12 interest, or by restricting access solely to the separate interest.

## 13 14 Article 2. Transfer Disclosure 15

16 4525. (a) The owner of a separate interest shall provide the  
17 following documents to a prospective purchaser of the separate  
18 interest, as soon as practicable before the transfer of title or the  
19 execution of a real property sales contract, as defined in Section  
20 2985:

21 (1) A copy of all governing documents. If the association is not  
22 incorporated, this shall include a statement in writing from an  
23 authorized representative of the association that the association is  
24 not incorporated.

25 (2) If there is a restriction in the governing documents limiting  
26 the occupancy, residency, or use of a separate interest on the basis  
27 of age in a manner different from that provided in Section 51.3, a  
28 statement that the restriction is only enforceable to the extent  
29 permitted by Section 51.3 and a statement specifying the applicable  
30 provisions of Section 51.3.

31 (3) A copy of the most recent documents distributed pursuant  
32 to Article 7 (commencing with Section 5300) of Chapter 6.

33 (4) A true statement in writing obtained from an authorized  
34 representative of the association as to the amount of the  
35 association's current regular and special assessments and fees, any  
36 assessments levied upon the owner's interest in the common  
37 interest development that are unpaid on the date of the statement,  
38 and any monetary fines or penalties levied upon the owner's  
39 interest and unpaid on the date of the statement. The statement  
40 obtained from an authorized representative shall also include true



1 information on late charges, interest, and costs of collection which,  
2 as of the date of the statement, are or may be made a lien upon the  
3 owner's interest in a common interest development pursuant to  
4 Article 2 (commencing with Section 5650) of Chapter 8.

5 (5) A copy or a summary of any notice previously sent to the  
6 owner pursuant to Section 5855 that sets forth any alleged violation  
7 of the governing documents that remains unresolved at the time  
8 of the request. The notice shall not be deemed a waiver of the  
9 association's right to enforce the governing documents against the  
10 owner or the prospective purchaser of the separate interest with  
11 respect to any violation. This paragraph shall not be construed to  
12 require an association to inspect an owner's separate interest.

13 (6) A copy of the initial list of defects provided to each member  
14 pursuant to Section 6000, unless the association and the builder  
15 subsequently enter into a settlement agreement or otherwise resolve  
16 the matter and the association complies with Section 6100.  
17 Disclosure of the initial list of defects pursuant to this paragraph  
18 does not waive any privilege attached to the document. The initial  
19 list of defects shall also include a statement that a final  
20 determination as to whether the list of defects is accurate and  
21 complete has not been made.

22 (7) A copy of the latest information provided for in Section  
23 6100.

24 (8) Any change in the association's current regular and special  
25 assessments and fees which have been approved by the board, but  
26 have not become due and payable as of the date disclosure is  
27 provided pursuant to this subdivision.

28 (9) If there is a provision in the governing documents that  
29 prohibits the rental or leasing of any of the separate interests in  
30 the common interest development to a renter, lessee, or tenant, a  
31 statement describing the prohibition and its applicability.

32 (10) If requested by the prospective purchaser, a copy of the  
33 minutes of board meetings, excluding meetings held in executive  
34 session, conducted over the previous 12 months, that were  
35 approved by the board.

36 (b) This section does not apply to an owner that is subject to  
37 the requirements of Section 11018.6 of the Business and  
38 Professions Code.

39 4528. The form for billing disclosures required by Section  
40 4530 shall be in substantially the following form:

1 CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION  
2 4525\*  
3  
4  
5 Property Address  
6  
7 Owner of Property  
8  
9 Owner's Mailing Address (If known or different from property address.)  
10  
11  
12 Provider of the Section 4525 Items:  
13  
14  
15  
16 Print Name \_\_\_\_\_ Position or Title \_\_\_\_\_ Association or Agent  
17  
18 Date Form Completed  
19  
20 Check or Complete Applicable Column or Columns Below  
21  
22  
23 Document Civil Code Section Not Available  
24 Included (N/A) or Not  
25 Applicable  
26 (N/App)  
27 Articles of Incorporation or Section 4525(a)(1)  
28 statement that not incorporated  
29  
30 CC&Rs Section 4525(a)(1)  
31  
32 Bylaws Section 4525(a)(1)  
33  
34 Operating Rules Section 4525(a)(1)  
35  
36 Age restrictions, if any Section 4525(a)(2)  
37  
38 Annual budget report or summary, Sections 5300 and  
39 including reserve study 4525(a)(3)  
40

1	Assessment and reserve funding	Sections 5300 and
2	disclosure summary	4525(a)(4)
3		
4	Financial statement review	Sections 5305 and
5		4525(a)(3)
6		
7	Assessment enforcement policy	Sections 5310 and
8		4525(a)(4)
9		
10	Insurance summary	Sections 5300 and
11		4525(a)(3)
12		
13	Regular assessment	Section 4525(a)(4)
14		
15	Special assessment	Section 4525(a)(4)
16		
17	Emergency assessment	Section 4525(a)(4)
18		
19	Other unpaid obligations of seller	Sections 5675 and
20		4525(a)(4)
21		
22	Approved changes to assessments	Sections 5300 and
23		4525(a)(4), (8)
24		
25	Settlement notice regarding	Sections 4525(a)(6),
26	common area defects	(7), and 6100
27		
28	Preliminary list of defects	Sections 4525(a)(6),
29		6000, and 6100
30		
31	Notice(s) of violation	Sections 5855 and
32		4525(a)(5)
33		
34	Required statement of fees	Section 4525
35		
36	Minutes of regular board meetings	Section 4525(a)(10)
37	conducted over the previous 12	
38	months, if requested	
39		
40	Total fees for these documents:	

1  
2 \* The information provided by this form may not include all fees that may be  
3 imposed before the close of escrow. Additional fees that are not related to the  
4 requirements of Section 4525 may be charged separately.  
5

6 4530. (a) Upon written request, the association shall, within  
7 10 days of the mailing or delivery of the request, provide the owner  
8 of a separate interest, or any other recipient authorized by the  
9 owner, with a copy of the requested documents specified in Section  
10 4525.

11 (b) (1) Upon receipt of a written request, the association shall  
12 provide, on the form described in Section 4528, a written or  
13 electronic estimate of the fees that will be assessed for providing  
14 the requested documents. The documents required to be made  
15 available pursuant to this section may be maintained in electronic  
16 form, and may be posted on the association's Internet Web site.  
17 Requesting parties shall have the option of receiving the documents  
18 by electronic transmission if the association maintains the  
19 documents in electronic form. The association may collect a  
20 reasonable fee based upon the association's actual cost for the  
21 procurement, preparation, reproduction, and delivery of the  
22 documents requested pursuant to the provisions of this section.

23 (2) No additional fees may be charged by the association for  
24 the electronic delivery of the documents requested.

25 (3) Fees for any documents required by this section shall be  
26 distinguished from other fees, fines, or assessments billed as part  
27 of the transfer or sales transaction. Delivery of the documents  
28 required by this section shall not be withheld for any reason nor  
29 subject to any condition except the payment of the fee allowed  
30 pursuant to paragraph (1).

31 (4) An association may contract with any person or entity to  
32 facilitate compliance with the requirements of this subdivision on  
33 behalf of the association.

34 (5) The association shall also provide a recipient authorized by  
35 the owner of a separate interest with a copy of the completed form  
36 specified in Section 4528 at the time the required documents are  
37 delivered.

38 4535. In addition to the requirements of this article, an owner  
39 transferring title to a separate interest shall comply with applicable  
40 requirements of Sections 1133 and 1134.

1 4540. Any person who willfully violates this article is liable  
2 to the purchaser of a separate interest that is subject to this section  
3 for actual damages occasioned thereby and, in addition, shall pay  
4 a civil penalty in an amount not to exceed five hundred dollars  
5 (\$500). In an action to enforce this liability, the prevailing party  
6 shall be awarded reasonable attorney's fees.

7 4545. Nothing in this article affects the validity of title to real  
8 property transferred in violation of this article.

9  
10 Article 3. Transfer Fee  
11

12 4575. Except as provided in Section 4580, neither an  
13 association nor a community service organization or similar entity  
14 may impose or collect any assessment, penalty, or fee in connection  
15 with a transfer of title or any other interest except for the following:

16 (a) An amount not to exceed the association's actual costs to  
17 change its records.

18 (b) An amount authorized by Section 4530.

19 4580. The prohibition in Section 4575 does not apply to a  
20 community service organization or similar entity, or to a nonprofit  
21 entity that provides services to a common interest development  
22 under a declaration of trust, of either of the following types:

23 (a) An organization or entity that satisfies both of the following  
24 conditions:

25 (1) It was established before February 20, 2003.

26 (2) It exists and operates, in whole or in part, to fund or perform  
27 environmental mitigation or to restore or maintain wetlands or  
28 native habitat, as required by the state or local government as an  
29 express written condition of development.

30 (b) An organization or entity that satisfies all of the following  
31 conditions:

32 (1) It is not an organization or entity described by subdivision  
33 (a).

34 (2) It was established and received a transfer fee before January  
35 1, 2004.

36 (3) On and after January 1, 2006, it offers a purchaser the  
37 following payment options for the fee or charge it collects at time  
38 of transfer:

39 (A) Paying the fee or charge at the time of transfer.

(B) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the organization or entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, the purchaser shall pay the remaining balance before the transfer.

#### Article 4. Restrictions on Transfer

4600. (a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member.

(b) Subdivision (a) does not apply to the following actions:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

1 (E) To transfer the burden of management and maintenance of  
2 any common area that is generally inaccessible and not of general  
3 use to the membership at large of the association.

4 (F) To accommodate a disability.

5 (G) To assign a parking space, storage unit, or other amenity,  
6 that is designated in the declaration for assignment, but is not  
7 assigned by the declaration to a specific separate interest.

8 *(H) To install and use an electric vehicle charging station in*  
9 *an owner's garage or a designated parking space that meets the*  
10 *requirements of Section 4745, where the installation or use of the*  
11 *charging station requires reasonable access through, or across,*  
12 *the common area for utility lines or meters.*

13 *(I) To install and use an electric vehicle charging station*  
14 *through a license granted by an association under Section 4745.*

15 ~~(H)~~

16 (J) To comply with governing law.

17 (c) Any measure placed before the members requesting that the  
18 board grant exclusive use of any portion of the common area shall  
19 specify whether the association will receive any monetary  
20 consideration for the grant and whether the association or the  
21 transferee will be responsible for providing any insurance coverage  
22 for exclusive use of the common area.

23 4605. (a) A member of an association may bring a civil action  
24 for declaratory or equitable relief for a violation of Section 4600  
25 by the association, including, but not limited to, injunctive relief,  
26 restitution, or a combination thereof, within one year of the date  
27 the cause of action accrues.

28 (b) A member who prevails in a civil action to enforce the  
29 member's rights pursuant to Section 4600 shall be entitled to  
30 reasonable attorney's fees and court costs, and the court may  
31 impose a civil penalty of up to five hundred dollars (\$500) for each  
32 violation, except that each identical violation shall be subject to  
33 only one penalty if the violation affects each member equally. A  
34 prevailing association shall not recover any costs, unless the court  
35 finds the action to be frivolous, unreasonable, or without  
36 foundation.

37 4610. (a) Except as provided in this section, the common area  
38 in a condominium project shall remain undivided, and there shall  
39 be no judicial partition thereof. Nothing in this section shall be  
40 deemed to prohibit partition of a cotenancy in a condominium.

(b) The owner of a separate interest in a condominium project may maintain a partition action as to the entire project as if the owners of all of the separate interests in the project were tenants in common in the entire project in the same proportion as their interests in the common area. The court shall order partition under this subdivision only by sale of the entire condominium project and only upon a showing of one of the following:

(1) More than three years before the filing of the action, the condominium project was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the condominium project has not been rebuilt or repaired substantially to its state prior to the damage or destruction.

(2) Three-fourths or more of the project is destroyed or substantially damaged and owners of separate interests holding in the aggregate more than a 50-percent interest in the common area oppose repair or restoration of the project.

(3) The project has been in existence more than 50 years, is obsolete and uneconomic, and owners of separate interests holding in the aggregate more than a 50-percent interest in the common area oppose repair or restoration of the project.

(4) Any conditions in the declaration for sale under the circumstances described in this subdivision have been met.

4615. (a) In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or the owners' agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the condominium project unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto.

(b) Labor performed or services or materials furnished for the common area, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each condominium owner.

(c) The owner of any condominium may remove that owner's condominium from a lien against two or more condominiums or any part thereof by payment to the holder of the lien of the fraction



1 of the total sum secured by the lien that is attributable to the  
2 owner's condominium.

3  
4 Article 5. Transfer of ~~separate~~ *Separate* Interest  
5

6 4625. In a community apartment project, any conveyance,  
7 judicial sale, or other voluntary or involuntary transfer of the  
8 separate interest includes the undivided interest in the community  
9 apartment project. Any conveyance, judicial sale, or other voluntary  
10 or involuntary transfer of the owner's entire estate also includes  
11 the owner's membership interest in the association.

12 4630. In a condominium project the common area is not subject  
13 to partition, except as provided in Section 4610. Any conveyance,  
14 judicial sale, or other voluntary or involuntary transfer of the  
15 separate interest includes the undivided interest in the common  
16 area. Any conveyance, judicial sale, or other voluntary or  
17 involuntary transfer of the owner's entire estate also includes the  
18 owner's membership interest in the association.

19 4635. In a planned development, any conveyance, judicial sale,  
20 or other voluntary or involuntary transfer of the separate interest  
21 includes the undivided interest in the common area, if any exists.  
22 Any conveyance, judicial sale, or other voluntary or involuntary  
23 transfer of the owner's entire estate also includes the owner's  
24 membership interest in the association.

25 4640. In a stock cooperative, any conveyance, judicial sale, or  
26 other voluntary or involuntary transfer of the separate interest  
27 includes the ownership interest in the corporation, however  
28 evidenced. Any conveyance, judicial sale, or other voluntary or  
29 involuntary transfer of the owner's entire estate also includes the  
30 owner's membership interest in the association.

31 4645. Nothing in this article prohibits the transfer of exclusive  
32 use areas, independent of any other interest in a common interest  
33 subdivision, if authorization to separately transfer exclusive use  
34 areas is expressly stated in the declaration and the transfer occurs  
35 in accordance with the terms of the declaration.

36 4650. Any restrictions upon the severability of the component  
37 interests in real property which are contained in the declaration  
38 shall not be deemed conditions repugnant to the interest created  
39 within the meaning of Section 711. However, these restrictions

1 shall not extend beyond the period in which the right to partition  
2 a project is suspended under Section 4610.

3  
4 CHAPTER 5. PROPERTY USE AND MAINTENANCE

5  
6 Article 1. Protected Uses

7  
8 4700. This article includes provisions that limit the authority  
9 of an association or the governing documents to regulate the use  
10 of a member's separate interest. Nothing in this article is intended  
11 to affect the application of any other provision that limits the  
12 authority of an association to regulate the use of a member's  
13 separate interest, including, but not limited to, the following  
14 provisions:

- 15 (a) Sections 712 and 713, relating to the display of signs.  
16 (b) Sections 714 and 714.1, relating to solar energy systems.  
17 (c) Section 714.5, relating to structures that are constructed  
18 offsite and moved to the property in sections or modules.  
19 (d) Sections 782, 782.5, and 6150 of this code and Section  
20 12956.1 of the Government Code, relating to racial restrictions.  
21 (e) Section 12927 of the Government Code, relating to the  
22 modification of property to accommodate a disability.  
23 (f) Section 1597.40 of the Health and Safety Code, relating to  
24 the operation of a family day care home.

25 4705. (a) Except as required for the protection of the public  
26 health or safety, no governing document shall limit or prohibit, or  
27 be construed to limit or prohibit, the display of the flag of the  
28 United States by a member on or in the member's separate interest  
29 or within the member's exclusive use common area.

30 (b) For purposes of this section, "display of the flag of the  
31 United States" means a flag of the United States made of fabric,  
32 cloth, or paper displayed from a staff or pole or in a window, and  
33 does not mean a depiction or emblem of the flag of the United  
34 States made of lights, paint, roofing, siding, paving materials, flora,  
35 or balloons, or any other similar building, landscaping, or  
36 decorative component.

37 (c) In any action to enforce this section, the prevailing party  
38 shall be awarded reasonable attorney's fees and costs.

39 4710. (a) The governing documents may not prohibit posting  
40 or displaying of noncommercial signs, posters, flags, or banners

1 on or in a member's separate interest, except as required for the  
2 protection of public health or safety or if the posting or display  
3 would violate a local, state, or federal law.

4 (b) For purposes of this section, a noncommercial sign, poster,  
5 flag, or banner may be made of paper, cardboard, cloth, plastic,  
6 or fabric, and may be posted or displayed from the yard, window,  
7 door, balcony, or outside wall of the separate interest, but may not  
8 be made of lights, roofing, siding, paving materials, flora, or  
9 balloons, or any other similar building, landscaping, or decorative  
10 component, or include the painting of architectural surfaces.

11 (c) An association may prohibit noncommercial signs and  
12 posters that are more than nine square feet in size and  
13 noncommercial flags or banners that are more than 15 square feet  
14 in size.

15 4715. (a) No governing documents shall prohibit the owner  
16 of a separate interest within a common interest development from  
17 keeping at least one pet within the common interest development,  
18 subject to reasonable rules and regulations of the association. This  
19 section may not be construed to affect any other rights provided  
20 by law to an owner of a separate interest to keep a pet within the  
21 development.

22 (b) For purposes of this section, "pet" means any domesticated  
23 bird, cat, dog, aquatic animal kept within an aquarium, or other  
24 animal as agreed to between the association and the homeowner.

25 (c) If the association implements a rule or regulation restricting  
26 the number of pets an owner may keep, the new rule or regulation  
27 shall not apply to prohibit an owner from continuing to keep any  
28 pet that the owner currently keeps in the owner's separate interest  
29 if the pet otherwise conforms with the previous rules or regulations  
30 relating to pets.

31 (d) For the purposes of this section, "governing documents"  
32 shall include, but are not limited to, the conditions, covenants, and  
33 restrictions of the common interest development, and the bylaws,  
34 rules, and regulations of the association.

35 (e) This section shall become operative on January 1, 2001, and  
36 shall only apply to governing documents entered into, amended,  
37 or otherwise modified on or after that date.

38 4720. (a) No association may require a homeowner to install  
39 or repair a roof in a manner that is in violation of Section 13132.7  
40 of the Health and Safety Code.

(b) Governing documents of a common interest development located within a very high fire severity zone, as designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, shall allow for at least one type of fire retardant roof covering material that meets the requirements of Section 13132.7 of the Health and Safety Code.

4725. (a) Any covenant, condition, or restriction contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, a common interest development that effectively prohibits or restricts the installation or use of a video or television antenna, including a satellite dish, or that effectively prohibits or restricts the attachment of that antenna to a structure within that development where the antenna is not visible from any street or common area, except as otherwise prohibited or restricted by law, is void and unenforceable as to its application to the installation or use of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less.

(b) This section shall not apply to any covenant, condition, or restriction, as described in subdivision (a), that imposes reasonable restrictions on the installation or use of a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of 36 inches or less. For purposes of this section, “reasonable restrictions” means those restrictions that do not significantly increase the cost of the video or television antenna system, including all related equipment, or significantly decrease its efficiency or performance and include all of the following:

(1) Requirements for application and notice to the association prior to the installation.

(2) Requirement of a member to obtain the approval of the association for the installation of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less on a separate interest owned by another.

(3) Provision for the maintenance, repair, or replacement of roofs or other building components.

(4) Requirements for installers of a video or television antenna to indemnify or reimburse the association or its members for loss

1 or damage caused by the installation, maintenance, or use of a  
2 video or television antenna that has a diameter or diagonal  
3 measurement of 36 inches or less.

4 (c) Whenever approval is required for the installation or use of  
5 a video or television antenna, including a satellite dish, the  
6 application for approval shall be processed by the appropriate  
7 approving entity for the common interest development in the same  
8 manner as an application for approval of an architectural  
9 modification to the property, and the issuance of a decision on the  
10 application shall not be willfully delayed.

11 (d) In any action to enforce compliance with this section, the  
12 prevailing party shall be awarded reasonable attorney's fees.

13 4730. (a) Any provision of a governing document that  
14 arbitrarily or unreasonably restricts an owner's ability to market  
15 the owner's interest in a common interest development is void.

16 (b) No association may adopt, enforce, or otherwise impose any  
17 governing document that does either of the following:

18 (1) Imposes an assessment or fee in connection with the  
19 marketing of an owner's interest in an amount that exceeds the  
20 association's actual or direct costs. That assessment or fee shall  
21 be deemed to violate the limitation set forth in subdivision (b) of  
22 Section 5600.

23 (2) Establishes an exclusive relationship with a real estate broker  
24 through which the sale or marketing of interests in the development  
25 is required to occur. The limitation set forth in this paragraph does  
26 not apply to the sale or marketing of separate interests owned by  
27 the association or to the sale or marketing of common area by the  
28 association.

29 (c) For purposes of this section, "market" and "marketing" mean  
30 listing, advertising, or obtaining or providing access to show the  
31 owner's interest in the development.

32 (d) This section does not apply to rules or regulations made  
33 pursuant to Section 712 or 713 regarding real estate signs.

34 4735. (a) Notwithstanding any other law, a provision of the  
35 governing documents shall be void and unenforceable if it does  
36 any of the following:

37 (1) Prohibits, or includes conditions that have the effect of  
38 prohibiting, the use of low water-using plants as a group.

39 (2) Has the effect of prohibiting or restricting compliance with  
40 either of the following:

1 (A) A water-efficient landscape ordinance adopted or in effect  
2 pursuant to subdivision (c) of Section 65595 of the Government  
3 Code.

4 (B) Any regulation or restriction on the use of water adopted  
5 pursuant to Section 353 or 375 of the Water Code.

6 (b) This section shall not prohibit an association from applying  
7 landscaping rules established in the governing documents, to the  
8 extent the rules fully conform with the requirements of subdivision  
9 (a).

10 4740. (a) An owner of a separate interest in a common interest  
11 development shall not be subject to a provision in a governing  
12 document or an amendment to a governing document that prohibits  
13 the rental or leasing of any of the separate interests in that common  
14 interest development to a renter, lessee, or tenant unless that  
15 governing document, or amendment thereto, was effective prior  
16 to the date the owner acquired title to his or her separate interest.

17 (b) Notwithstanding the provisions of this section, an owner of  
18 a separate interest in a common interest development may expressly  
19 consent to be subject to a governing document or an amendment  
20 to a governing document that prohibits the rental or leasing of any  
21 of the separate interests in the common interest development to a  
22 renter, lessee, or tenant.

23 (c) For purposes of this section, the right to rent or lease the  
24 separate interest of an owner shall not be deemed to have  
25 terminated if the transfer by the owner of all or part of the separate  
26 interest meets at least one of the following conditions:

27 (1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation  
28 Code, the transfer is exempt, for purposes of reassessment by the  
29 county tax assessor.

30 (2) Pursuant to subdivision (b) of, solely with respect to probate  
31 transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the  
32 transfer is exempt from the requirements to prepare and deliver a  
33 Real Estate Transfer Disclosure Statement, as set forth in Section  
34 1102.6.

35 (d) Prior to renting or leasing his or her separate interest as  
36 provided by this section, an owner shall provide the association  
37 verification of the date the owner acquired title to the separate  
38 interest and the name and contact information of the prospective  
39 tenant or lessee or the prospective tenant's or lessee's  
40 representative.

1 (e) Nothing in this section shall be deemed to revise, alter, or  
2 otherwise affect the voting process by which a common interest  
3 development adopts or amends its governing documents.

4 (f) This section shall apply only to a provision in a governing  
5 document or a provision in an amendment to a governing document  
6 that becomes effective on or after January 1, 2012.

7 4745. (a) Any covenant, restriction, or condition contained in  
8 any deed, contract, security instrument, or other instrument  
9 affecting the transfer or sale of any interest in a common interest  
10 development, and any provision of a governing document, as  
11 defined in Section 4150, that *either* effectively prohibits or  
12 *unreasonably* restricts the installation or use of an electric vehicle  
13 charging station *in an owner's designated parking space, including,*  
14 *but not limited to, a deeded parking space, a parking space in an*  
15 *owner's exclusive use common area, or a parking space that is*  
16 *specifically designated for use by a particular owner, or is in*  
17 *conflict with the provisions of this section* is void and  
18 unenforceable.

19 (b) (1) This section does not apply to provisions that impose  
20 reasonable restrictions on electric vehicle charging stations.  
21 However, it is the policy of the state to promote, encourage, and  
22 remove obstacles to the use of electric vehicle charging stations.

23 (2) For purposes of this section, "reasonable restrictions" are  
24 restrictions that do not significantly increase the cost of the station  
25 or significantly decrease its efficiency or specified performance.

26 (c) An electric vehicle charging station shall meet applicable  
27 health and safety standards and requirements imposed by state and  
28 local ~~permitting~~ authorities, *and all other applicable zoning, land*  
29 *use, or other ordinances, or land use permits.*

30 (d) For purposes of this section, "electric vehicle charging  
31 station" means a station that is designed in compliance with the  
32 California Building Standards Code and delivers electricity from  
33 a source outside an electric vehicle into one or more electric  
34 vehicles. An electric vehicle charging station may include several  
35 charge points simultaneously connecting several electric vehicles  
36 to the station and any related equipment needed to facilitate  
37 charging plug-in electric vehicles.

38 (e) If approval is required for the installation or use of an electric  
39 vehicle charging station, the application for approval shall be  
40 processed and approved by the association in the same manner as

1 an application for approval of an architectural modification to the  
2 property, and shall not be willfully avoided or delayed. The  
3 approval or denial of an application shall be in writing. If an  
4 application is not denied in writing within 60 days from the date  
5 of receipt of the application, the application shall be deemed  
6 approved, unless that delay is the result of a reasonable request  
7 for additional information.

8 (f) If the electric vehicle charging station is to be placed in a  
9 common area or an exclusive use common area, as designated in  
10 the common interest development's declaration, the following  
11 provisions apply:

12 (1) The ~~homeowner~~ owner first shall obtain approval from the  
13 ~~common interest development association~~ to install the electric  
14 vehicle charging station and the ~~common interest development~~  
15 ~~association~~ shall approve the installation if the ~~homeowner~~ owner  
16 agrees in writing to do all of the following:

17 (A) Comply with the ~~common interest development's~~  
18 ~~association's~~ architectural standards for the installation of the  
19 *charging station*.

20 (B) Engage a licensed contractor to install the *charging station*.

21 (C) Within 14 days of approval, provide a certificate of  
22 insurance that names the ~~common interest development association~~  
23 as an additional insured under the ~~homeowner's~~ owner's insurance  
24 policy *in the amount set forth in paragraph (3)*.

25 (D) Pay for the electricity usage associated with the *charging*  
26 *station*.

27 (2) The ~~homeowner~~ owner and each successive ~~homeowner~~  
28 owner of the ~~parking stall on which or near where the electric~~  
29 ~~vehicle~~ charging station is placed shall be responsible for all of  
30 the following:

31 (A) Costs for damage to the *charging station*, ~~common areas~~  
32 *common area*, *exclusive use common areas area*, or ~~adjacent units~~  
33 *separate interests* resulting from the installation, maintenance,  
34 repair, removal, or replacement of the *charging station*.

35 (B) Costs for the maintenance, ~~removal~~, repair, and replacement  
36 of the ~~electric vehicle~~ charging station until it has been removed  
37 ~~from the common area or exclusive use common area and for the~~  
38 *restoration of the common area after removal*.

39 (C) The cost of electricity associated with the *charging station*.



1 (D) Disclosing to prospective buyers the existence of any electric  
2 vehicle charging station of the owner and the related responsibilities  
3 of the homeowner owner under this section.

4 (3) The homeowner owner and each successive homeowner  
5 owner of the charging station, at all times, shall maintain an  
6 umbrella a homeowner liability coverage policy in the amount of  
7 one million dollars (\$1,000,000) covering the obligations of the  
8 owner under paragraph (2); and shall name the common interest  
9 development association as an additional insured under  
10 the policy with a right to notice of cancellation.

11 (4) A homeowner shall not be required to maintain a homeowner  
12 liability coverage policy for an existing National Electrical  
13 Manufacturers Association standard alternating current power  
14 plug.

15 (g) Except as provided in subdivision (h), installation of an  
16 electric vehicle charging station for the exclusive use of an owner  
17 in a common area, that is not an exclusive use common area, shall  
18 be authorized by the association only if installation in the owner's  
19 designated parking space is impossible or unreasonably expensive.  
20 In such cases, the association shall enter into a license agreement  
21 with the owner for the use of the space in a common area, and the  
22 owner shall comply with all of the requirements in subdivision (f).

23 (h) The association or owners may install an electric vehicle  
24 charging station in the common area for the use of all members  
25 of the association and, in that case, the association shall develop  
26 appropriate terms of use for the charging station.

27 (i) An association may create a new parking space where one  
28 did not previously exist to facilitate the installation of an electric  
29 vehicle charging station.

30 ~~(g)~~

31 (j) An association that willfully violates this section shall be  
32 liable to the applicant or other party for actual damages, and shall  
33 pay a civil penalty to the applicant or other party in an amount not  
34 to exceed one thousand dollars (\$1,000).

35 ~~(h)~~

36 (k) In any action to enforce compliance with this section, the  
37 prevailing plaintiff shall be awarded reasonable attorney's fees.

Article 2. Modification of Separate Interest

4760. (a) Subject to the governing documents and applicable law, a member may do the following:

(1) Make any improvement or alteration within the boundaries of the member's separate interest that does not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify the member's separate interest, at the member's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the separate interest for the purposes of this paragraph if the separate interest is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the member when the separate interest is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any member who intends to modify a separate interest pursuant to this paragraph shall submit plans and specifications to the association for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

4765. (a) This section applies if the governing documents require association approval before a member may make a physical change to the member's separate interest or to the common area.

1 In reviewing and approving or disapproving a proposed change,  
2 the association shall satisfy the following requirements:

3 (1) The association shall provide a fair, reasonable, and  
4 expeditious procedure for making its decision. The procedure shall  
5 be included in the association's governing documents. The  
6 procedure shall provide for prompt deadlines. The procedure shall  
7 state the maximum time for response to an application or a request  
8 for reconsideration by the board.

9 (2) A decision on a proposed change shall be made in good faith  
10 and may not be unreasonable, arbitrary, or capricious.

11 (3) Notwithstanding a contrary provision of the governing  
12 documents, a decision on a proposed change may not violate any  
13 governing provision of law, including, but not limited to, the Fair  
14 Employment and Housing Act (Part 2.8 (commencing with Section  
15 12900) of Division 3 of Title 2 of the Government Code), or a  
16 building code or other applicable law governing land use or public  
17 safety.

18 (4) A decision on a proposed change shall be in writing. If a  
19 proposed change is disapproved, the written decision shall include  
20 both an explanation of why the proposed change is disapproved  
21 and a description of the procedure for reconsideration of the  
22 decision by the board.

23 (5) If a proposed change is disapproved, the applicant is entitled  
24 to reconsideration by the board, at an open meeting of the board.  
25 This paragraph does not require reconsideration of a decision that  
26 is made by the board or a body that has the same membership as  
27 the board, at a meeting that satisfies the requirements of Article 2  
28 (commencing with Section 4900) of Chapter 6. Reconsideration  
29 by the board does not constitute dispute resolution within the  
30 meaning of Section 5905.

31 (b) Nothing in this section authorizes a physical change to the  
32 common area in a manner that is inconsistent with an association's  
33 governing documents, unless the change is required by law.

34 (c) An association shall annually provide its members with  
35 notice of any requirements for association approval of physical  
36 changes to property. The notice shall describe the types of changes  
37 that require association approval and shall include a copy of the  
38 procedure used to review and approve or disapprove a proposed  
39 change.

## Article 3. Maintenance

4775. (a) Unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest.

(b) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the association shall be borne by the owner of the separate interest affected.

4780. (a) In a community apartment project, condominium project, or stock cooperative, unless otherwise provided in the declaration, the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms.

(b) In a planned development, unless a different maintenance scheme is provided in the declaration, each owner of a separate interest is responsible for the repair and maintenance of that separate interest as may be occasioned by the presence of wood-destroying pests or organisms. Upon approval of the majority of all members of the association, pursuant to Section 4065, that responsibility may be delegated to the association, which shall be entitled to recover the cost thereof as a special assessment.

4785. (a) The association may cause the temporary, summary removal of any occupant of a common interest development for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms.

(b) The association shall give notice of the need to temporarily vacate a separate interest to the occupants and to the owners, not less than 15 days nor more than 30 days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation.

(c) Notice by the association shall be deemed complete upon either:

1 (1) Personal delivery of a copy of the notice to the occupants,  
2 and if an occupant is not the owner, individual delivery pursuant  
3 to Section 4040, of a copy of the notice to the owner.

4 (2) Individual delivery pursuant to Section 4040 to the occupant  
5 at the address of the separate interest, and if the occupant is not  
6 the owner, individual delivery pursuant to Section 4040, of a copy  
7 of the notice to the owner.

8 (d) For purposes of this section, “occupant” means an owner,  
9 resident, guest, invitee, tenant, lessee, sublessee, or other person  
10 in possession of the separate interest.

11 4790. Notwithstanding the provisions of the declaration, a  
12 member is entitled to reasonable access to the common area for  
13 the purpose of maintaining the internal and external telephone  
14 wiring made part of the exclusive use common area of the  
15 member’s separate interest pursuant to subdivision (c) of Section  
16 4145. The access shall be subject to the consent of the association,  
17 whose approval shall not be unreasonably withheld, and which  
18 may include the association’s approval of telephone wiring upon  
19 the exterior of the common area, and other conditions as the  
20 association determines reasonable.

21  
22 CHAPTER 6. ASSOCIATION GOVERNANCE

23  
24 Article 1. Association Existence and Powers

25  
26 4800. A common interest development shall be managed by  
27 an association that may be incorporated or unincorporated. The  
28 association may be referred to as an owners’ association or a  
29 community association.

30 4805. (a) Unless the governing documents provide otherwise,  
31 and regardless of whether the association is incorporated or  
32 unincorporated, the association may exercise the powers granted  
33 to a nonprofit mutual benefit corporation, as enumerated in Section  
34 7140 of the Corporations Code, except that an unincorporated  
35 association may not adopt or use a corporate seal or issue  
36 membership certificates in accordance with Section 7313 of the  
37 Corporations Code.

38 (b) The association, whether incorporated or unincorporated,  
39 may exercise the powers granted to an association in this act.

1 4820. Whenever two or more associations have consolidated  
2 any of their functions under a joint neighborhood association or  
3 similar organization, members of each participating association  
4 shall be (a) entitled to attend all meetings of the joint association  
5 other than executive sessions, (b) given reasonable opportunity  
6 for participation in those meetings, and (c) entitled to the same  
7 access to the joint association's records as they are to the  
8 participating association's records.

9  
10 Article 2. Board Meeting

11  
12 4900. This article shall be known and may be cited as the  
13 Common Interest Development Open Meeting Act.

14 4910. (a) The board shall not take action on any item of  
15 business outside of a board meeting.

16 (b) (1) Notwithstanding Section 7211 of the Corporations Code,  
17 the board shall not conduct a meeting via a series of electronic  
18 transmissions, including, but not limited to, electronic mail, except  
19 as specified in paragraph (2).

20 (2) Electronic transmissions may be used as a method of  
21 conducting an emergency *board* meeting if all directors,  
22 individually or collectively, consent in writing to that action, and  
23 if the written consent or consents are filed with the minutes of the  
24 board meeting. These written consents may be transmitted  
25 electronically.

26 4920. (a) Except as provided in subdivision (b), the association  
27 shall give notice of the time and place of a board meeting at least  
28 four days before the meeting.

29 (b) (1) If a board meeting is an emergency meeting held  
30 pursuant to Section 4923, the association is not required to give  
31 notice of the time and place of the meeting.

32 (2) If a nonemergency board meeting is held solely in executive  
33 session, the association shall give notice of the time and place of  
34 the meeting at least two days prior to the meeting.

35 (3) If the association's governing documents require a longer  
36 period of notice than is required by this section, the association  
37 shall comply with the period stated in its governing documents.

38 (c) Notice of a board meeting shall be given by general delivery  
39 pursuant to Section 4045.

1 (d) Notice of a board meeting shall contain the agenda for the  
2 meeting.

3 4923. An emergency board meeting may be called by the  
4 president of the association, or by any two directors other than the  
5 president, if there are circumstances that could not have been  
6 reasonably foreseen which require immediate attention and possible  
7 action by the board, and which of necessity make it impracticable  
8 to provide notice as required by Section 4920.

9 4925. (a) Any member may attend board meetings, except  
10 when the board adjourns to, or meets solely in, executive session.  
11 As specified in subdivision (b) of Section 4090, a member of the  
12 association shall be entitled to attend a teleconference meeting or  
13 the portion of a teleconference meeting that is open to members,  
14 and that meeting or portion of the meeting shall be audible to the  
15 members in a location specified in the notice of the meeting.

16 (b) The board shall permit any member to speak at any meeting  
17 of the association or the board, except for meetings of the board  
18 held in executive session. A reasonable time limit for all members  
19 of the association to speak to the board or before a meeting of the  
20 association shall be established by the board.

21 4930. (a) Except as described in subdivisions (b) to (e),  
22 inclusive, the board may not discuss or take action on any item at  
23 a nonemergency meeting unless the item was placed on the agenda  
24 included in the notice that was distributed pursuant to subdivision  
25 (a) of Section 4920. This subdivision does not prohibit a member  
26 or resident who is not a director from speaking on issues not on  
27 the agenda.

28 (b) Notwithstanding subdivision (a), a director, a managing  
29 agent or other agent of the board, or a member of the staff of the  
30 board, may do any of the following:

31 (1) Briefly respond to statements made or questions posed by  
32 a person speaking at a meeting as described in subdivision (b) of  
33 Section 4925.

34 (2) Ask a question for clarification, make a brief announcement,  
35 or make a brief report on the person's own activities, whether in  
36 response to questions posed by a member or based upon the  
37 person's own initiative.

38 (c) Notwithstanding subdivision (a), the board or a director,  
39 subject to rules or procedures of the board, may do any of the  
40 following:

1 (1) Provide a reference to, or provide other resources for factual  
2 information to, its managing agent or other agents or staff.

3 (2) Request its managing agent or other agents or staff to report  
4 back to the board at a subsequent meeting concerning any matter,  
5 or take action to direct its managing agent or other agents or staff  
6 to place a matter of business on a future agenda.

7 (3) Direct its managing agent or other agents or staff to perform  
8 administrative tasks that are necessary to carry out this section.

9 (d) Notwithstanding subdivision (a), the board may take action  
10 on any item of business not appearing on the agenda distributed  
11 pursuant to subdivision (a) of Section 4920 under any of the  
12 following conditions:

13 (1) Upon a determination made by a majority of the board  
14 present at the meeting that an emergency situation exists. An  
15 emergency situation exists if there are circumstances that could  
16 not have been reasonably foreseen by the board, that require  
17 immediate attention and possible action by the board, and that, of  
18 necessity, make it impracticable to provide notice.

19 (2) Upon a determination made by the board by a vote of  
20 two-thirds of the directors present at the meeting, or, if less than  
21 two-thirds of total membership of the board is present at the  
22 meeting, by a unanimous vote of the directors present, that there  
23 is a need to take immediate action and that the need for action  
24 came to the attention of the board after the agenda was distributed  
25 pursuant to subdivision (a) of Section 4920.

26 (3) The item appeared on an agenda that was distributed pursuant  
27 to subdivision (a) of Section 4920 for a prior meeting of the board  
28 that occurred not more than 30 calendar days before the date that  
29 action is taken on the item and, at the prior meeting, action on the  
30 item was continued to the meeting at which the action is taken.

31 (e) Before discussing any item pursuant to subdivision (d), the  
32 board shall openly identify the item to the members in attendance  
33 at the meeting.

34 4935. (a) The board may ~~meet in, or adjourn to, or meet solely~~  
35 *in*, executive session to consider litigation, matters relating to the  
36 formation of contracts with third parties, member discipline,  
37 personnel matters, or to meet with a member, upon the member's  
38 request, regarding the member's payment of assessments, as  
39 specified in Section 5665.



1 (b) The board shall ~~meet in~~ *adjourn to, or meet solely in*,  
2 executive session to discuss member discipline, if requested by  
3 the member who is the subject of the discussion. That member  
4 shall be entitled to attend the executive session.

5 (c) The board shall ~~meet in~~ *adjourn to, or meet solely in*,  
6 executive session to discuss a payment plan pursuant to Section  
7 5665.

8 (d) The board shall ~~meet in~~ *adjourn to, or meet solely in*,  
9 executive session to decide whether to foreclose on a lien pursuant  
10 to subdivision (b) of Section 5705.

11 (e) Any matter discussed in executive session shall be generally  
12 noted in the minutes of the immediately following meeting that is  
13 open to the entire membership.

14 4950. (a) The minutes, minutes proposed for adoption that are  
15 marked to indicate draft status, or a summary of the minutes, of  
16 any board meeting, other than an executive session, shall be  
17 available to members within 30 days of the meeting. The minutes,  
18 proposed minutes, or summary minutes shall be distributed to any  
19 member upon request and upon reimbursement of the association's  
20 costs for making that distribution.

21 (b) The annual policy statement, prepared pursuant to Section  
22 5310, shall inform the members of their right to obtain copies of  
23 board meeting minutes and of how and where to do so.

24 4955. (a) A member of an association may bring a civil action  
25 for declaratory or equitable relief for a violation of this article by  
26 the association, including, but not limited to, injunctive relief,  
27 restitution, or a combination thereof, within one year of the date  
28 the cause of action accrues.

29 (b) A member who prevails in a civil action to enforce the  
30 member's rights pursuant to this article shall be entitled to  
31 reasonable attorney's fees and court costs, and the court may  
32 impose a civil penalty of up to five hundred dollars (\$500) for each  
33 violation, except that each identical violation shall be subject to  
34 only one penalty if the violation affects each member equally. A  
35 prevailing association shall not recover any costs, unless the court  
36 finds the action to be frivolous, unreasonable, or without  
37 foundation.

## Article 3. Member Meeting

5000. (a) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.

(b) The board shall permit any member to speak at any meeting of the membership of the association. A reasonable time limit for all members to speak at a meeting of the association shall be established by the board.

## Article 4. Member Election

5100. (a) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600 shall be held by secret ballot in accordance with the procedures set forth in this article.

(b) This article also governs an election on any topic that is expressly identified in the operating rules as being governed by this article.

(c) The provisions of this article apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

(d) The procedures set forth in this article shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

(e) In the event of a conflict between this article and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail.

5105. (a) An association shall adopt rules, in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided

1 to all candidates and members advocating a point of view,  
2 including those not endorsed by the board, for purposes that are  
3 reasonably related to the election. The association shall not edit  
4 or redact any content from these communications, but may include  
5 a statement specifying that the candidate or member, and not the  
6 association, is responsible for that content.

7 (2) Ensure access to the common area meeting space, if any  
8 exists, during a campaign, at no cost, to all candidates, including  
9 those who are not incumbents, and to all members advocating a  
10 point of view, including those not endorsed by the board, for  
11 purposes reasonably related to the election.

12 (3) Specify the qualifications for candidates for the board and  
13 any other elected position, and procedures for the nomination of  
14 candidates, consistent with the governing documents. A nomination  
15 or election procedure shall not be deemed reasonable if it disallows  
16 any member from nominating himself or herself for election to the  
17 board.

18 (4) Specify the qualifications for voting, the voting power of  
19 each membership, the authenticity, validity, and effect of proxies,  
20 and the voting period for elections, including the times at which  
21 polls will open and close, consistent with the governing documents.

22 (5) Specify a method of selecting one or three independent third  
23 parties as inspector or inspectors of elections utilizing one of the  
24 following methods:

25 (A) Appointment of the inspector or inspectors by the board.

26 (B) Election of the inspector or inspectors by the members of  
27 the association.

28 (C) Any other method for selecting the inspector or inspectors.

29 (6) Allow the inspector or inspectors to appoint and oversee  
30 additional persons to verify signatures and to count and tabulate  
31 votes as the inspector or inspectors deem appropriate, provided  
32 that the persons are independent third parties.

33 (b) Notwithstanding any other provision of law, the rules  
34 adopted pursuant to this section may provide for the nomination  
35 of candidates from the floor of membership meetings or nomination  
36 by any other manner. Those rules may permit write-in candidates  
37 for ballots.

38 5110. (a) The association shall select an independent third  
39 party or parties as an inspector of elections. The number of  
40 inspectors of elections shall be one or three.

(b) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services unless expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a) of Section 5105.

(c) The inspector or inspectors of elections shall do all of the following:

(1) Determine the number of memberships entitled to vote and the voting power of each.

(2) Determine the authenticity, validity, and effect of proxies, if any.

(3) Receive ballots.

(4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(5) Count and tabulate all votes.

(6) Determine when the polls shall close, consistent with the governing documents.

(7) Determine the tabulated results of the election.

(8) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

(d) An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, and as expeditiously as is practical. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

5115. (a) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve

1 confidentiality, a voter may not be identified by name, address, or  
2 lot, parcel, or unit number on the ballot. The association shall use  
3 as a model those procedures used by California counties for  
4 ensuring confidentiality of vote by mail ballots, including all of  
5 the following:

6 (1) The ballot itself is not signed by the voter, but is inserted  
7 into an envelope that is sealed. This envelope is inserted into a  
8 second envelope that is sealed. In the upper left hand corner of the  
9 second envelope, the voter shall sign the voter's name, indicate  
10 the voter's name, and indicate the address or separate interest  
11 identifier that entitles the voter to vote.

12 (2) The second envelope is addressed to the inspector or  
13 inspectors of elections, who will be tallying the votes. The envelope  
14 may be mailed or delivered by hand to a location specified by the  
15 inspector or inspectors of elections. The member may request a  
16 receipt for delivery.

17 (b) A quorum shall be required only if so stated in the governing  
18 documents or other provisions of law. If a quorum is required by  
19 the governing documents, each ballot received by the inspector of  
20 elections shall be treated as a member present at a meeting for  
21 purposes of establishing a quorum.

22 (c) An association shall allow for cumulative voting using the  
23 secret ballot procedures provided in this section, if cumulative  
24 voting is provided for in the governing documents.

25 (d) Except for the meeting to count the votes required in  
26 subdivision (a) of Section 5120, an election may be conducted  
27 entirely by mail unless otherwise specified in the governing  
28 documents.

29 (e) In an election to approve an amendment of the governing  
30 documents, the text of the proposed amendment shall be delivered  
31 to the members with the ballot.

32 5120. (a) All votes shall be counted and tabulated by the  
33 inspector or inspectors of elections, or the designee of the inspector  
34 of elections, in public at a properly noticed open meeting of the  
35 board or members. Any candidate or other member of the  
36 association may witness the counting and tabulation of the votes.  
37 No person, including a member of the association or an employee  
38 of the management company, shall open or otherwise review any  
39 ballot prior to the time and place at which the ballots are counted  
40 and tabulated. The inspector of elections, or the designee of the

1 inspector of elections, may verify the member's information and  
2 signature on the outer envelope prior to the meeting at which  
3 ballots are tabulated. Once a secret ballot is received by the  
4 inspector of elections, it shall be irrevocable.

5 (b) The tabulated results of the election shall be promptly  
6 reported to the board and shall be recorded in the minutes of the  
7 next meeting of the board and shall be available for review by  
8 members of the association. Within 15 days of the election, the  
9 board shall give general notice pursuant to Section 4045 of the  
10 tabulated results of the election.

11 5125. The sealed ballots at all times shall be in the custody of  
12 the inspector or inspectors of elections or at a location designated  
13 by the inspector or inspectors until after the tabulation of the vote,  
14 and until the time allowed by Section 5145 for challenging the  
15 election has expired, at which time custody shall be transferred to  
16 the association. If there is a recount or other challenge to the  
17 election process, the inspector or inspectors of elections shall, upon  
18 written request, make the ballots available for inspection and  
19 review by an association member or the member's authorized  
20 representative. Any recount shall be conducted in a manner that  
21 preserves the confidentiality of the vote.

22 5130. (a) For purposes of this article, the following definitions  
23 shall apply:

24 (1) "Proxy" means a written authorization signed by a member  
25 or the authorized representative of the member that gives another  
26 member or members the power to vote on behalf of that member.

27 (2) "Signed" means the placing of the member's name on the  
28 proxy (whether by manual signature, typewriting, telegraphic  
29 transmission, or otherwise) by the member or authorized  
30 representative of the member.

31 (b) Proxies shall not be construed or used in lieu of a ballot. An  
32 association may use proxies if permitted or required by the bylaws  
33 of the association and if those proxies meet the requirements of  
34 this article, other laws, and the governing documents, but the  
35 association shall not be required to prepare or distribute proxies  
36 pursuant to this article.

37 (c) Any instruction given in a proxy issued for an election that  
38 directs the manner in which the proxyholder is to cast the vote  
39 shall be set forth on a separate page of the proxy that can be  
40 detached and given to the proxyholder to retain. The proxyholder

1 shall cast the member's vote by secret ballot. The proxy may be  
2 revoked by the member prior to the receipt of the ballot by the  
3 inspector of elections as described in Section 7613 of the  
4 Corporations Code.

5 5135. (a) Association funds shall not be used for campaign  
6 purposes in connection with any association board election. Funds  
7 of the association shall not be used for campaign purposes in  
8 connection with any other association election except to the extent  
9 necessary to comply with duties of the association imposed by  
10 law.

11 (b) For the purposes of this section, "campaign purposes"  
12 includes, but is not limited to, the following:

13 (1) Expressly advocating the election or defeat of any candidate  
14 that is on the association election ballot.

15 (2) Including the photograph or prominently featuring the name  
16 of any candidate on a communication from the association or its  
17 board, excepting the ballot, ballot materials, or a communication  
18 that is legally required, within 30 days of an election. This is not  
19 a campaign purpose if the communication is one for which  
20 subdivision (a) of Section 5105 requires that equal access be  
21 provided to another candidate or advocate.

22 5145. (a) A member of an association may bring a civil action  
23 for declaratory or equitable relief for a violation of this article by  
24 the association, including, but not limited to, injunctive relief,  
25 restitution, or a combination thereof, within one year of the date  
26 the cause of action accrues. Upon a finding that the election  
27 procedures of this article, or the adoption of and adherence to rules  
28 provided by Article 5 (commencing with Section 4340) of Chapter  
29 3, were not followed, a court may void any results of the election.

30 (b) A member who prevails in a civil action to enforce the  
31 member's rights pursuant to this article shall be entitled to  
32 reasonable attorney's fees and court costs, and the court may  
33 impose a civil penalty of up to five hundred dollars (\$500) for each  
34 violation, except that each identical violation shall be subject to  
35 only one penalty if the violation affects each member of the  
36 association equally. A prevailing association shall not recover any  
37 costs, unless the court finds the action to be frivolous,  
38 unreasonable, or without foundation.

39 (c) A cause of action under Sections 5100 to 5130, inclusive,  
40 with respect to access to association resources by a candidate or

1 member advocating a point of view, the receipt of a ballot by a  
2 member, or the counting, tabulation, or reporting of, or access to,  
3 ballots for inspection and review after tabulation may be brought  
4 in small claims court if the amount of the demand does not exceed  
5 the jurisdiction of that court.

6  
7 Article 5. Record Inspection  
8

9 5200. For the purposes of this article, the following definitions  
10 shall apply:

11 (a) “Association records” means all of the following:

12 (1) Any financial document required to be provided to a member  
13 in Article 7 (commencing with Section 5300) or in Sections 5565  
14 and 5810.

15 (2) Any financial document or statement required to be provided  
16 in Article 2 (commencing with Section 4525) of Chapter 4.

17 (3) Interim financial statements, periodic or as compiled,  
18 containing any of the following:

19 (A) Balance sheet.

20 (B) Income and expense statement.

21 (C) Budget comparison.

22 (D) General ledger. A “general ledger” is a report that shows  
23 all transactions that occurred in an association account over a  
24 specified period of time.

25 The records described in this paragraph shall be prepared in  
26 accordance with an accrual or modified accrual basis of accounting.

27 (4) Executed contracts not otherwise privileged under law.

28 (5) Written board approval of vendor or contractor proposals  
29 or invoices.

30 (6) State and federal tax returns.

31 (7) Reserve account balances and records of payments made  
32 from reserve accounts.

33 (8) Agendas and minutes of meetings of the members, the board,  
34 and any committees appointed by the board pursuant to Section  
35 7212 of the Corporations Code; excluding, however, minutes and  
36 other information from executive sessions of the board as described  
37 in Article 2 (commencing with Section 4900).

38 (9) Membership lists, including name, property address, and  
39 mailing address, but not including information for members who  
40 have opted out pursuant to Section 5220.



1 (10) Check registers.

2 (11) The governing documents.

3 (12) An accounting prepared pursuant to subdivision (b) of  
4 Section 5520.

5 (13) An “enhanced association record” as defined in subdivision  
6 (b).

7 (b) “Enhanced association records” means invoices, receipts  
8 and canceled checks for payments made by the association,  
9 purchase orders approved by the association, credit card statements  
10 for credit cards issued in the name of the association, statements  
11 for services rendered, and reimbursement requests submitted to  
12 the association.

13 5205. (a) The association shall make available association  
14 records for the time periods and within the timeframes provided  
15 in Section 5210 for inspection and copying by a member of the  
16 association, or the member’s designated representative.

17 (b) A member of the association may designate another person  
18 to inspect and copy the specified association records on the  
19 member’s behalf. The member shall make this designation in  
20 writing.

21 (c) The association shall make the specified association records  
22 available for inspection and copying in the association’s business  
23 office within the common interest development.

24 (d) If the association does not have a business office within the  
25 development, the association shall make the specified association  
26 records available for inspection and copying at a place agreed to  
27 by the requesting member and the association.

28 (e) If the association and the requesting member cannot agree  
29 upon a place for inspection and copying pursuant to subdivision  
30 (d) or if the requesting member submits a written request directly  
31 to the association for copies of specifically identified records, the  
32 association may satisfy the requirement to make the association  
33 records available for inspection and copying by delivering copies  
34 of the specifically identified records to the member by individual  
35 delivery pursuant to Section 4040 within the timeframes set forth  
36 in subdivision (b) of Section 5210.

37 (f) The association may bill the requesting member for the direct  
38 and actual cost of copying and mailing requested documents. The  
39 association shall inform the member of the amount of the copying

1 and mailing costs, and the member shall agree to pay those costs,  
2 before copying and sending the requested documents.

3 (g) In addition to the direct and actual costs of copying and  
4 mailing, the association may bill the requesting member an amount  
5 not in excess of ten dollars (\$10) per hour, and not to exceed two  
6 hundred dollars (\$200) total per written request, for the time  
7 actually and reasonably involved in redacting an enhanced  
8 association record. If the enhanced association record includes a  
9 reimbursement request, the person submitting the reimbursement  
10 request shall be solely responsible for removing all personal  
11 identification information from the request. The association shall  
12 inform the member of the estimated costs, and the member shall  
13 agree to pay those costs, before retrieving the requested documents.

14 (h) Requesting parties shall have the option of receiving  
15 specifically identified records by electronic transmission or  
16 machine-readable storage media as long as those records can be  
17 transmitted in a redacted format that does not allow the records to  
18 be altered. The cost of duplication shall be limited to the direct  
19 cost of producing the copy of a record in that electronic format.  
20 The association may deliver specifically identified records by  
21 electronic transmission or machine-readable storage media as long  
22 as those records can be transmitted in a redacted format that  
23 prevents the records from being altered.

24 5210. (a) Association records are subject to member inspection  
25 for the following time periods:

26 (1) For the current fiscal year and for each of the previous two  
27 fiscal years.

28 (2) Notwithstanding paragraph (1), minutes of member and  
29 board meetings are subject to inspection permanently. If a  
30 committee has decisionmaking authority, minutes of the meetings  
31 of that committee shall be made available commencing January  
32 1, 2007, and shall thereafter be permanently subject to inspection.

33 (b) When a member properly requests access to association  
34 records, access to the requested records shall be granted within  
35 the following time periods:

36 (1) Association records prepared during the current fiscal year,  
37 within 10 business days following the association's receipt of the  
38 request.

1 (2) Association records prepared during the previous two fiscal  
2 years, within 30 calendar days following the association's receipt  
3 of the request.

4 (3) Any record or statement available pursuant to Article 2  
5 (commencing with Section 4525) of Chapter 4, Article 7  
6 (commencing with Section 5300), Section 5565, or Section 5810,  
7 within the timeframe specified therein.

8 (4) Minutes of member and board meetings, within the  
9 timeframe specified in subdivision (a) of Section 4950.

10 (5) Minutes of meetings of committees with decisionmaking  
11 authority for meetings commencing on or after January 1, 2007,  
12 within 15 calendar days following approval.

13 (6) Membership list, within the timeframe specified in Section  
14 8330 of the Corporations Code.

15 (c) There shall be no liability pursuant to this article for an  
16 association that fails to retain records for the periods specified in  
17 subdivision (a) that were created prior to January 1, 2006.

18 5215. (a) Except as provided in subdivision (b), the association  
19 may withhold or redact information from the association records  
20 if any of the following are true:

21 (1) The release of the information is reasonably likely to lead  
22 to identity theft. For the purposes of this section, "identity theft"  
23 means the unauthorized use of another person's personal  
24 identifying information to obtain credit, goods, services, money,  
25 or property. Examples of information that may be withheld or  
26 redacted pursuant to this paragraph include bank account numbers  
27 of members or vendors, social security or tax identification  
28 numbers, and check, stock, and credit card numbers.

29 (2) The release of the information is reasonably likely to lead  
30 to fraud in connection with the association.

31 (3) The information is privileged under law. Examples include  
32 documents subject to attorney-client privilege or relating to  
33 litigation in which the association is or may become involved, and  
34 confidential settlement agreements.

35 (4) The release of the information is reasonably likely to  
36 compromise the privacy of an individual member of the association.

37 (5) The information contains any of the following:

38 (A) Records of goods or services provided a la carte to  
39 individual members of the association for which the association  
40 received monetary consideration other than assessments.

1 (B) Records of disciplinary actions, collection activities, or  
2 payment plans of members other than the member requesting the  
3 records.

4 (C) Any person's personal identification information, including,  
5 without limitation, social security number, tax identification  
6 number, driver's license number, credit card account numbers,  
7 bank account number, and bank routing number.

8 (D) Minutes and other information from executive sessions of  
9 the board as described in Article 2 (commencing with Section  
10 4900), except for executed contracts not otherwise privileged.  
11 Privileged contracts shall not include contracts for maintenance,  
12 management, or legal services.

13 (E) Personnel records other than the payroll records required to  
14 be provided under subdivision (b).

15 (F) Interior architectural plans, including security features, for  
16 individual homes.

17 (b) Except as provided by the attorney-client privilege, the  
18 association may not withhold or redact information concerning  
19 the compensation paid to employees, vendors, or contractors.  
20 Compensation information for individual employees shall be set  
21 forth by job classification or title, not by the employee's name,  
22 social security number, or other personal information.

23 (c) No association, officer, director, employee, agent, or  
24 volunteer of an association shall be liable for damages to a member  
25 of the association or any third party as the result of identity theft  
26 or other breach of privacy because of the failure to withhold or  
27 redact that member's information under this section unless the  
28 failure to withhold or redact the information was intentional,  
29 willful, or negligent.

30 (d) If requested by the requesting member, an association that  
31 denies or redacts records shall provide a written explanation  
32 specifying the legal basis for withholding or redacting the requested  
33 records.

34 5220. A member of the association may opt out of the sharing  
35 of that member's name, property address, and mailing address by  
36 notifying the association in writing that the member prefers to be  
37 contacted via the alternative process described in subdivision (c)  
38 of Section 8330 of the Corporations Code. This opt out shall remain  
39 in effect until changed by the member.

1     5225. A member requesting the membership list shall state the  
2 purpose for which the list is requested which purpose shall be  
3 reasonably related to the requester's interest as a member. If the  
4 association reasonably believes that the information in the list will  
5 be used for another purpose, it may deny the member access to  
6 the list. If the request is denied, in any subsequent action brought  
7 by the member under Section 5235, the association shall have the  
8 burden to prove that the member would have allowed use of the  
9 information for purposes unrelated to the member's interest as a  
10 member.

11     5230. (a) The association records, and any information from  
12 them, may not be sold, used for a commercial purpose, or used for  
13 any other purpose not reasonably related to a member's interest  
14 as a member. An association may bring an action against any  
15 person who violates this article for injunctive relief and for actual  
16 damages to the association caused by the violation.

17     (b) This article may not be construed to limit the right of an  
18 association to damages for misuse of information obtained from  
19 the association records pursuant to this article or to limit the right  
20 of an association to injunctive relief to stop the misuse of this  
21 information.

22     (c) An association shall be entitled to recover reasonable costs  
23 and expenses, including reasonable attorney's fees, in a successful  
24 action to enforce its rights under this article.

25     5235. (a) A member may bring an action to enforce that  
26 member's right to inspect and copy the association records. If a  
27 court finds that the association unreasonably withheld access to  
28 the association records, the court shall award the member  
29 reasonable costs and expenses, including reasonable attorney's  
30 fees, and may assess a civil penalty of up to five hundred dollars  
31 (\$500) for the denial of each separate written request.

32     (b) A cause of action under this section may be brought in small  
33 claims court if the amount of the demand does not exceed the  
34 jurisdiction of that court.

35     (c) A prevailing association may recover any costs if the court  
36 finds the action to be frivolous, unreasonable, or without  
37 foundation.

38     5240. (a) As applied to an association and its members, the  
39 provisions of this article are intended to supersede the provisions

1 of Sections 8330 and 8333 of the Corporations Code to the extent  
2 those sections are inconsistent.

3 (b) Except as provided in subdivision (a), members of the  
4 association shall have access to association records, including  
5 accounting books and records and membership lists, in accordance  
6 with Article 3 (commencing with Section 8330) of Chapter 13 of  
7 Part 3 of Division 2 of Title 1 of the Corporations Code.

8 (c) The provisions of this article apply to any community service  
9 organization or similar entity that is related to the association, and  
10 to any nonprofit entity that provides services to a common interest  
11 development under a declaration of trust. This article shall operate  
12 to give a member of the organization or entity a right to inspect  
13 and copy the records of that organization or entity equivalent to  
14 that granted to association members by this article.

15 (d) The provisions of this article shall not apply to any common  
16 interest development in which separate interests are being offered  
17 for sale by a subdivider under the authority of a public report issued  
18 by the Department of Real Estate so long as the subdivider or all  
19 subdividers offering those separate interests for sale, or any  
20 employees of those subdividers or any other person who receives  
21 direct or indirect compensation from any of those subdividers,  
22 comprise a majority of the directors. Notwithstanding the  
23 foregoing, this article shall apply to that common interest  
24 development no later than 10 years after the close of escrow for  
25 the first sale of a separate interest to a member of the general public  
26 pursuant to the public report issued for the first phase of the  
27 development.

28  
29 Article 6. ~~Record Keeping~~ *Recordkeeping*  
30

31 5260. To be effective, any of the following requests shall be  
32 delivered in writing to the association, pursuant to Section 4035:

33 (a) A request to change the member's information in the  
34 association membership list.

35 (b) A request to add or remove a second address for delivery of  
36 individual notices to the member, pursuant to subdivision (b) of  
37 Section 4040.

38 (c) A request for individual delivery of general notices to the  
39 member, pursuant to subdivision (b) of Section 4045, or a request  
40 to cancel a prior request for individual delivery of general notices.

1 (d) A request to opt out of the membership list pursuant to  
2 Section 5220, or a request to cancel a prior request to opt out of  
3 the membership list.

4 (e) A request to receive a full copy of a specified annual budget  
5 report or annual policy statement pursuant to Section 5320.

6 (f) A request to receive all reports in full, pursuant to subdivision  
7 (b) of Section 5320, or a request to cancel a prior request to receive  
8 all reports in full.

9  
10 Article 7. Annual Reports  
11

12 5300. (a) Notwithstanding a contrary provision in the  
13 governing documents, an association shall distribute an annual  
14 budget report; 30 to 90 days before the end of its fiscal year.

15 (b) Unless the governing documents impose more stringent  
16 standards, the annual budget report shall include all of the  
17 following information:

18 (1) A pro forma operating budget, showing the estimated  
19 revenue and expenses on an accrual basis.

20 (2) A summary of the association's reserves, prepared pursuant  
21 to Section 5565.

22 (3) A summary of the reserve funding plan adopted by the board,  
23 as specified in paragraph (5) of subdivision (b) of Section 5550.  
24 The summary shall include notice to members that the full reserve  
25 study plan is available upon request, and the association shall  
26 provide the full reserve plan to any member upon request.

27 (4) A statement as to whether the board has determined to defer  
28 or not undertake repairs or replacement of any major component  
29 with a remaining life of 30 years or less, including a justification  
30 for the deferral or decision not to undertake the repairs or  
31 replacement.

32 (5) A statement as to whether the board, consistent with the  
33 reserve funding plan adopted pursuant to Section 5560, has  
34 determined or anticipates that the levy of one or more special  
35 assessments will be required to repair, replace, or restore any major  
36 component or to provide adequate reserves therefor. If so, the  
37 statement shall also set out the estimated amount, commencement  
38 date, and duration of the assessment.

39 (6) A statement as to the mechanism or mechanisms by which  
40 the board will fund reserves to repair or replace major components,

1 including assessments, borrowing, use of other assets, deferral of  
2 selected replacements or repairs, or alternative mechanisms.

3 (7) A general statement addressing the procedures used for the  
4 calculation and establishment of those reserves to defray the future  
5 repair, replacement, or additions to those major components that  
6 the association is obligated to maintain. The statement shall  
7 include, but need not be limited to, reserve calculations made using  
8 the formula described in paragraph (4) of subdivision (b) of Section  
9 5570, and may not assume a rate of return on cash reserves in  
10 excess of 2 percent above the discount rate published by the Federal  
11 Reserve Bank of San Francisco at the time the calculation was  
12 made.

13 (8) A statement as to whether the association has any outstanding  
14 loans with an original term of more than one year, including the  
15 payee, interest rate, amount outstanding, annual payment, and  
16 when the loan is scheduled to be retired.

17 (9) A summary of the association's property, general liability,  
18 earthquake, flood, and fidelity insurance policies. For each policy,  
19 the summary shall include the name of the insurer, the type of  
20 insurance, the policy limit, and the amount of the deductible, if  
21 any. To the extent that any of the required information is specified  
22 in the insurance policy declaration page, the association may meet  
23 its obligation to disclose that information by making copies of that  
24 page and distributing it with the annual budget report. The  
25 summary distributed pursuant to this paragraph shall contain, in  
26 at least 10-point boldface type, the following statement:

27 "This summary of the association's policies of insurance provides  
28 only certain information, as required by Section 5300 of the Civil  
29 Code, and should not be considered a substitute for the complete  
30 policy terms and conditions contained in the actual policies of  
31 insurance. Any association member may, upon request and  
32 provision of reasonable notice, review the association's insurance  
33 policies and, upon request and payment of reasonable duplication  
34 charges, obtain copies of those policies. Although the association  
35 maintains the policies of insurance specified in this summary, the  
36 association's policies of insurance may not cover your property,  
37 including personal property or real property improvements to or  
38 around your dwelling, or personal injuries or other losses that occur  
39 within or around your dwelling. Even if a loss is covered, you may  
40 nevertheless be responsible for paying all or a portion of any



1 deductible that applies. Association members should consult with  
2 their individual insurance broker or agent for appropriate additional  
3 coverage.”

4 (c) The annual budget report shall be made available to the  
5 members pursuant to Section 5320.

6 (d) The summary of the association’s reserves disclosed pursuant  
7 to paragraph (2) of subdivision (b) shall not be admissible in  
8 evidence to show improper financial management of an association,  
9 provided that other relevant and competent evidence of the financial  
10 condition of the association is not made inadmissible by this  
11 provision.

12 (e) The Assessment and Reserve Funding Disclosure Summary  
13 form, prepared pursuant to Section 5570, shall accompany each  
14 annual budget report or summary of the annual budget report that  
15 is delivered pursuant to this article.

16 5305. Unless the governing documents impose more stringent  
17 standards, a review of the financial statement of the association  
18 shall be prepared in accordance with generally accepted accounting  
19 principles by a licensee of the California Board of Accountancy  
20 for any fiscal year in which the gross income to the association  
21 exceeds seventy-five thousand dollars (\$75,000). A copy of the  
22 review of the financial statement shall be distributed to the  
23 members within 120 days after the close of each fiscal year, by  
24 individual delivery pursuant to Section 4040.

25 5310. (a) Within 30 to 90 days before the end of its fiscal year,  
26 the board shall distribute an annual policy statement that provides  
27 the members with information about association policies. The  
28 annual policy statement shall include all of the following  
29 information:

30 (1) The name and address of the person designated to receive  
31 official communications to the association, pursuant to Section  
32 4035.

33 (2) A statement explaining that a member may submit a request  
34 to have notices sent to up to two different specified addresses,  
35 pursuant to subdivision (b) of Section 4040.

36 (3) The location, if any, designated for posting of a general  
37 notice, pursuant to paragraph (3) of subdivision (a) of Section  
38 4045.

39 (4) Notice of a member’s option to receive general notices by  
40 individual delivery, pursuant to subdivision (b) of Section 4045.

1 (5) Notice of a member's right to receive copies of meeting  
2 minutes, pursuant to subdivision (b) of Section 4950.

3 (6) The statement of assessment collection policies required by  
4 Section 5730.

5 (7) A statement describing the association's policies and  
6 practices in enforcing lien rights or other legal remedies for default  
7 in the payment of assessments.

8 (8) A statement describing the association's discipline policy,  
9 if any, including any schedule of penalties for violations of the  
10 governing documents pursuant to Section 5850.

11 (9) A summary of dispute resolution procedures, pursuant to  
12 Sections 5920 and 5965.

13 (10) A summary of any requirements for association approval  
14 of a physical change to property, pursuant to Section 4765.

15 (11) The mailing address for overnight payment of assessments,  
16 pursuant to Section 5655.

17 (12) Any other information that is required by law or the  
18 governing documents or that the board determines to be appropriate  
19 for inclusion.

20 (b) The annual policy statement shall be made available to the  
21 members pursuant to Section 5320.

22 5320. (a) When a report is prepared pursuant to Section 5300  
23 or 5310, the association shall deliver one of the following  
24 documents to all members, by individual delivery pursuant to  
25 Section 4040:

26 (1) The full report.

27 (2) A summary of the report. The summary shall include a  
28 general description of the content of the report. Instructions on  
29 how to request a complete copy of the report at no cost to the  
30 member shall be printed in at least 10-point boldface type on the  
31 first page of the summary.

32 (b) Notwithstanding subdivision (a), if a member has requested  
33 to receive all reports in full, the association shall deliver the full  
34 report to that member, rather than a summary of the report.

#### 35 Article 8. Conflict of Interest

36  
37  
38 5350. (a) Notwithstanding any other law, and regardless of  
39 whether an association is incorporated or unincorporated, the  
40 provisions of Sections 7233 and 7234 of the Corporations Code

1 shall apply to any contract or other transaction authorized,  
2 approved, or ratified by the board or a committee of the board.

3 (b) A director or member of a committee shall not vote on any  
4 of the following matters:

5 (1) Discipline of the director or committee member.

6 (2) An assessment against the director or committee member  
7 for damage to the common area or facilities.

8 (3) A request, by the director or committee member, for a  
9 payment plan for overdue assessments.

10 (4) A decision whether to foreclose on a lien on the separate  
11 interest of the director or committee member.

12 (5) Review of a proposed physical change to the separate interest  
13 of the director or committee member.

14 (6) A grant of exclusive use common area to the director or  
15 committee member.

16 (c) Nothing in this section limits any other provision of law or  
17 the governing documents that ~~governs~~ *govern* a decision in which  
18 a director may have an interest.

19  
20 Article 9. Managing Agent  
21

22 5375. A prospective managing agent of a common interest  
23 development shall provide a written statement to the board as soon  
24 as practicable, but in no event more than 90 days, before entering  
25 into a management agreement which shall contain all of the  
26 following information concerning the managing agent:

27 (a) The names and business addresses of the owners or general  
28 partners of the managing agent. If the managing agent is a  
29 corporation, the written statement shall include the names and  
30 business addresses of the directors and officers and shareholders  
31 holding greater than 10 percent of the shares of the corporation.

32 (b) Whether or not any relevant licenses such as architectural  
33 design, construction, engineering, real estate, or accounting have  
34 been issued by this state and are currently held by the persons  
35 specified in subdivision (a). If a license is currently held by any  
36 of those persons, the statement shall contain the following  
37 information:

38 (1) What license is held.

39 (2) The dates the license is valid.

40 (3) The name of the licensee appearing on that license.

(c) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management, or accounting are currently held by any of the persons specified in subdivision (a), including, but not limited to, a professional common interest development manager. If any certification or designation is held, the statement shall include the following information:

(1) What the certification or designation is and what entity issued it.

(2) The dates the certification or designation is valid.

(3) The names in which the certification or designation is held.

5380. (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit those funds that are not placed into an escrow account with a bank, savings association, or credit union or into an account under the control of the association, into a trust fund account maintained by the managing agent in a bank, savings association, or credit union in this state. All funds deposited by the managing agent in the trust fund account shall be kept in this state in a financial institution, as defined in Section 31041 of the Financial Code, which is insured by the federal government, and shall be maintained there until disbursed in accordance with written instructions from the association entitled to the funds.

(b) At the written request of the board, the funds the managing agent accepts or receives on behalf of the association shall be deposited into an interest-bearing account in a bank, savings association, or credit union in this state, provided all of the following requirements are met:

(1) The account is in the name of the managing agent as trustee for the association or in the name of the association.

(2) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(3) The funds in the account are kept separate, distinct, and apart from the funds belonging to the managing agent or to any other person for whom the managing agent holds funds in trust except that the funds of various associations may be commingled as permitted pursuant to subdivision (d).

(4) The managing agent discloses to the board the nature of the account, how interest will be calculated and paid, whether service

1 charges will be paid to the depository and by whom, and any notice  
2 requirements or penalties for withdrawal of funds from the account.

3 (5) No interest earned on funds in the account shall inure directly  
4 or indirectly to the benefit of the managing agent or the managing  
5 agent's employees.

6 (c) The managing agent shall maintain a separate record of the  
7 receipt and disposition of all funds described in this section,  
8 including any interest earned on the funds.

9 (d) The managing agent shall not commingle the funds of the  
10 association with the managing agent's own money or with the  
11 money of others that the managing agent receives or accepts, unless  
12 all of the following requirements are met:

13 (1) The managing agent commingled the funds of various  
14 associations on or before February 26, 1990, and has obtained a  
15 written agreement with the board of each association that the  
16 managing agent will maintain a fidelity and surety bond in an  
17 amount that provides adequate protection to the associations as  
18 agreed upon by the managing agent and the board of each  
19 association.

20 (2) The managing agent discloses in the written agreement  
21 whether the managing agent is deriving benefits from the  
22 commingled account or the bank, credit union, or savings  
23 institution where the moneys will be on deposit.

24 (3) The written agreement provided pursuant to this subdivision  
25 includes, but is not limited to, the name and address of the bonding  
26 companies, the amount of the bonds, and the expiration dates of  
27 the bonds.

28 (4) If there are any changes in the bond coverage or the  
29 companies providing the coverage, the managing agent discloses  
30 that fact to the board of each affected association as soon as  
31 practical, but in no event more than 10 days after the change.

32 (5) The bonds assure the protection of the association and  
33 provide the association at least 10 days' notice prior to cancellation.

34 (6) Completed payments on the behalf of the association are  
35 deposited within 24 hours or the next business day and do not  
36 remain commingled for more than 10 calendar days.

37 (e) The prevailing party in an action to enforce this section shall  
38 be entitled to recover reasonable legal fees and court costs.

1 (f) As used in this section, “completed payment” means funds  
2 received that clearly identify the account to which the funds are  
3 to be credited.

4 5385. For the purposes of this article, “managing agent” does  
5 not include a full-time employee of the association.  
6

#### 7 Article 10. Government Assistance 8

9 5400. To the extent existing funds are available, the Department  
10 of Consumer Affairs and the Department of Real Estate shall  
11 develop an online education course for the board regarding the  
12 role, duties, laws, and responsibilities of directors and prospective  
13 directors, and the nonjudicial foreclosure process.

14 5405. (a) To assist with the identification of common interest  
15 developments, each association, whether incorporated or  
16 unincorporated, shall submit to the Secretary of State, on a form  
17 and for a fee not to exceed thirty dollars (\$30) that the Secretary  
18 of State shall prescribe, the following information concerning the  
19 association and the development that it manages:

20 (1) A statement that the association is formed to manage a  
21 common interest development under the Davis-Stirling Common  
22 Interest Development Act.

23 (2) The name of the association.

24 (3) The street address of the business or corporate office of the  
25 association, if any.

26 (4) The street address of the association’s onsite office, if  
27 different from the street address of the business or corporate office,  
28 or if there is no onsite office, the street address of the responsible  
29 officer or managing agent of the association.

30 (5) The name, address, and either the daytime telephone number  
31 or e-mail address of the president of the association, other than the  
32 address, telephone number, or e-mail address of the association’s  
33 onsite office or managing agent.

34 (6) The name, street address, and daytime telephone number of  
35 the association’s managing agent, if any.

36 (7) The county, and, if in an incorporated area, the city in which  
37 the development is physically located. If the boundaries of the  
38 development are physically located in more than one county, each  
39 of the counties in which it is located.

1 (8) If the development is in an unincorporated area, the city  
2 closest in proximity to the development.

3 (9) The front street and nearest cross street of the physical  
4 location of the development.

5 (10) The type of common interest development managed by the  
6 association.

7 (11) The number of separate interests in the development.

8 (b) The association shall submit the information required by  
9 this section as follows:

10 (1) By incorporated associations, within 90 days after the filing  
11 of its original articles of incorporation, and thereafter at the time  
12 the association files its statement of principal business activity  
13 with the Secretary of State pursuant to Section 8210 of the  
14 Corporations Code.

15 (2) By unincorporated associations, in July of 2003, and in that  
16 same month biennially thereafter. Upon changing its status to that  
17 of a corporation, the association shall comply with the filing  
18 deadlines in paragraph (1).

19 (c) The association shall notify the Secretary of State of any  
20 change in the street address of the association's onsite office or of  
21 the responsible officer or managing agent of the association in the  
22 form and for a fee prescribed by the Secretary of State, within 60  
23 days of the change.

24 (d) The penalty for an incorporated association's noncompliance  
25 with the initial or biennial filing requirements of this section shall  
26 be suspension of the association's rights, privileges, and powers  
27 as a corporation and monetary penalties, to the same extent and in  
28 the same manner as suspension and monetary penalties imposed  
29 pursuant to Section 8810 of the Corporations Code.

30 (e) The statement required by this section may be filed,  
31 notwithstanding suspension of the corporate powers, rights, and  
32 privileges under this section or under provisions of the Revenue  
33 and Taxation Code. Upon the filing of a statement under this  
34 section by a corporation that has suffered suspension under this  
35 section, the Secretary of State shall certify that fact to the Franchise  
36 Tax Board and the corporation may thereupon be relieved from  
37 suspension, unless the corporation is held in suspension by the  
38 Franchise Tax Board by reason of Section 23301, 23301.5, or  
39 23775 of the Revenue and Taxation Code.

(f) The Secretary of State shall make the information submitted pursuant to paragraph (5) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The information submitted pursuant to this section shall be made available for governmental or public inspection.

(g) Whenever any form is filed pursuant to this section, it supersedes any previously filed form.

(h) The Secretary of State may destroy or otherwise dispose of any form filed pursuant to this section after it has been superseded by the filing of a new form.

## CHAPTER 7. FINANCES

### Article 1. Accounting

5500. Unless the governing documents impose more stringent standards, the board shall do all of the following:

(a) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(b) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(e) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

### Article 2. Use of Reserve Funds

5510. (a) The signatures of at least two persons, who shall be directors, or one officer who is not a director and one who is a



1 director, shall be required for the withdrawal of moneys from the  
2 association's reserve accounts.

3 (b) The board shall not expend funds designated as reserve funds  
4 for any purpose other than the repair, restoration, replacement, or  
5 maintenance of, or litigation involving the repair, restoration,  
6 replacement, or maintenance of, major components that the  
7 association is obligated to repair, restore, replace, or maintain and  
8 for which the reserve fund was established.

9 5515. (a) Notwithstanding Section 5510, the board may  
10 authorize the temporary transfer of moneys from a reserve fund  
11 to the association's general operating fund to meet short-term  
12 cashflow requirements or other expenses, if the board has provided  
13 notice of the intent to consider the transfer in a board meeting  
14 notice provided pursuant to Section 4920.

15 (b) The notice shall include the reasons the transfer is needed,  
16 some of the options for repayment, and whether a special  
17 assessment may be considered.

18 (c) If the board authorizes the transfer, the board shall issue a  
19 written finding, recorded in the board's minutes, explaining the  
20 reasons that the transfer is needed, and describing when and how  
21 the moneys will be repaid to the reserve fund.

22 (d) The transferred funds shall be restored to the reserve fund  
23 within one year of the date of the initial transfer, except that the  
24 board may, after giving the same notice required for considering  
25 a transfer, and, upon making a finding supported by documentation  
26 that a temporary delay would be in the best interests of the common  
27 interest development, temporarily delay the restoration.

28 (e) The board shall exercise prudent fiscal management in  
29 maintaining the integrity of the reserve account, and shall, if  
30 necessary, levy a special assessment to recover the full amount of  
31 the expended funds within the time limits required by this section.  
32 This special assessment is subject to the limitation imposed by  
33 Section 5605. The board may, at its discretion, extend the date the  
34 payment on the special assessment is due. Any extension shall not  
35 prevent the board from pursuing any legal remedy to enforce the  
36 collection of an unpaid special assessment.

37 5520. (a) When the decision is made to use reserve funds or  
38 to temporarily transfer moneys from the reserve fund to pay for  
39 litigation pursuant to subdivision (b) of Section 5510, the  
40 association shall provide general notice pursuant to Section 4045

1 of that decision, and of the availability of an accounting of those  
2 expenses.

3 (b) Unless the governing documents impose more stringent  
4 standards, the association shall make an accounting of expenses  
5 related to the litigation on at least a quarterly basis. The accounting  
6 shall be made available for inspection by members of the  
7 association at the association's office.

8  
9 Article 3. Reserve Planning

10  
11 5550. (a) At least once every three years, the board shall cause  
12 to be conducted a reasonably competent and diligent visual  
13 inspection of the accessible areas of the major components that  
14 the association is obligated to repair, replace, restore, or maintain  
15 as part of a study of the reserve account requirements of the  
16 common interest development, if the current replacement value of  
17 the major components is equal to or greater than one-half of the  
18 gross budget of the association, excluding the association's reserve  
19 account for that period. The board shall review this study, or cause  
20 it to be reviewed, annually and shall consider and implement  
21 necessary adjustments to the board's analysis of the reserve account  
22 requirements as a result of that review.

23 (b) The study required by this section shall at a minimum  
24 include:

25 (1) Identification of the major components that the association  
26 is obligated to repair, replace, restore, or maintain that, as of the  
27 date of the study, have a remaining useful life of less than 30 years.

28 (2) Identification of the probable remaining useful life of the  
29 components identified in paragraph (1) as of the date of the study.

30 (3) An estimate of the cost of repair, replacement, restoration,  
31 or maintenance of the components identified in paragraph (1).

32 (4) An estimate of the total annual contribution necessary to  
33 defray the cost to repair, replace, restore, or maintain the  
34 components identified in paragraph (1) during and at the end of  
35 their useful life, after subtracting total reserve funds as of the date  
36 of the study.

37 (5) A reserve funding plan that indicates how the association  
38 plans to fund the contribution identified in paragraph (4) to meet  
39 the association's obligation for the repair and replacement of all  
40 major components with an expected remaining life of 30 years or

1 less, not including those components that the board has determined  
2 will not be replaced or repaired.

3 5560. (a) The reserve funding plan required by Section 5550  
4 shall include a schedule of the date and amount of any change in  
5 regular or special assessments that would be needed to sufficiently  
6 fund the reserve funding plan.

7 (b) The plan shall be adopted by the board at an open meeting  
8 before the membership of the association as described in Article  
9 2 (commencing with Section 4900) of Chapter 6.

10 (c) If the board determines that an assessment increase is  
11 necessary to fund the reserve funding plan, any increase shall be  
12 approved in a separate action of the board that is consistent with  
13 the procedure described in Section 5605.

14 5565. The summary of the association's reserves required by  
15 paragraph (2) of subdivision (b) of Section 5300 shall be based on  
16 the most recent review or study conducted pursuant to Section  
17 5550, shall be based only on assets held in cash or cash equivalents,  
18 shall be printed in boldface type, and shall include all of the  
19 following:

20 (a) The current estimated replacement cost, estimated remaining  
21 life, and estimated useful life of each major component.

22 (b) As of the end of the fiscal year for which the study is  
23 prepared:

24 (1) The current estimate of the amount of cash reserves  
25 necessary to repair, replace, restore, or maintain the major  
26 components.

27 (2) The current amount of accumulated cash reserves actually  
28 set aside to repair, replace, restore, or maintain major components.

29 (3) If applicable, the amount of funds received from either a  
30 compensatory damage award or settlement to an association from  
31 any person for injuries to property, real or personal, arising out of  
32 any construction or design defects, and the expenditure or  
33 disposition of funds, including the amounts expended for the direct  
34 and indirect costs of repair of construction or design defects. These  
35 amounts shall be reported at the end of the fiscal year for which  
36 the study is prepared as separate line items under cash reserves  
37 pursuant to paragraph (2). Instead of complying with the  
38 requirements set forth in this paragraph, an association that is  
39 obligated to issue a review of its financial statement pursuant to

Section 5305 may include in the review a statement containing all of the information required by this paragraph.

(c) The percentage that the amount determined for purposes of paragraph (2) of subdivision (b) equals the amount determined for purposes of paragraph (1) of subdivision (b).

(d) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of paragraph (2) of subdivision (b) from the amount determined for purposes of paragraph (1) of subdivision (b) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.

5570. (a) The disclosures required by this article with regard to an association or a property shall be summarized on the following form:

Assessment and Reserve Funding Disclosure Summary For the  
Fiscal Year Ending \_\_\_\_\_

(1) The regular assessment per ownership interest is \$\_\_\_\_\_ per \_\_\_\_\_. Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_\_ of the attached summary.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
------------------------------	---	----------------------------

	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members?

Approximate date assessment will be due:	Amount per ownership interest per month or year:
	Total:

(5) All major components are included in the reserve study and are included in its calculations.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570, the estimated amount required in the reserve fund at the end of the current fiscal year is \$\_\_\_\_, based in whole or in part on the last reserve study or update prepared by \_\_\_\_ as of \_\_\_\_ (month), \_\_\_\_ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$\_\_\_\_, resulting in reserves being \_\_\_\_ percent funded at this date.

1 If an alternate, but generally accepted, method of calculation is  
2 also used, the required reserve amount is \$\_\_\_\_. (See attached  
3 explanation)

4 (7) Based on the method of calculation in paragraph (4) of  
5 subdivision (b) of Section 5570 of the Civil Code, the estimated  
6 amount required in the reserve fund at the end of each of the next  
7 five budget years is \$\_\_\_\_\_, and the projected reserve fund cash  
8 balance in each of those years, taking into account only assessments  
9 already approved and other known revenues, is \$\_\_\_\_\_, leaving  
10 the reserve at \_\_\_\_\_ percent funding. If the reserve funding plan  
11 approved by the association is implemented, the projected reserve  
12 fund cash balance in each of those years will be \$\_\_\_\_\_, leaving  
13 the reserve at \_\_\_\_\_ percent funding.

14 Note: The financial representations set forth in this summary  
15 are based on the best estimates of the preparer at that time. The  
16 estimates are subject to change. At the time this summary was  
17 prepared, the assumed long-term before-tax interest rate earned  
18 on reserve funds was \_\_\_\_\_ percent per year, and the assumed  
19 long-term inflation rate to be applied to major component repair  
20 and replacement costs was \_\_\_\_\_ percent per year.

21  
22 (b) For the purposes of preparing a summary pursuant to this  
23 section:

24 (1) "Estimated remaining useful life" means the time reasonably  
25 calculated to remain before a major component will require  
26 replacement.

27 (2) "Major component" has the meaning used in Section 55530.  
28 Components with an estimated remaining useful life of more than  
29 30 years may be included in a study as a capital asset or disregarded  
30 from the reserve calculation, so long as the decision is revealed in  
31 the reserve study report and reported in the Assessment and  
32 Reserve Funding Disclosure Summary.

33 (3) The form set out in subdivision (a) shall accompany each  
34 annual budget report or summary thereof that is delivered pursuant  
35 to Section 5300. The form may be supplemented or modified to  
36 clarify the information delivered, so long as the minimum  
37 information set out in subdivision (a) is provided.

38 (4) For the purpose of the report and summary, the amount of  
39 reserves needed to be accumulated for a component at a given time  
40 shall be computed as the current cost of replacement or repair

1 multiplied by the number of years the component has been in  
2 service divided by the useful life of the component. This shall not  
3 be construed to require the board to fund reserves in accordance  
4 with this calculation.

5 5580. (a) Unless the governing documents impose more  
6 stringent standards, any community service organization whose  
7 funding from the association or its members exceeds 10 percent  
8 of the organization's annual budget shall prepare and distribute to  
9 the association a report that meets the requirements of Section  
10 5012 of the Corporations Code, and that describes in detail  
11 administrative costs and identifies the payees of those costs in a  
12 manner consistent with the provisions of Article 5 (commencing  
13 with Section 5200) of Chapter 6.

14 (b) If the community service organization does not comply with  
15 the standards, the report shall disclose the noncompliance in detail.  
16 If a community service organization is responsible for the  
17 maintenance of major components for which an association would  
18 otherwise be responsible, the community service organization shall  
19 supply to the association the information regarding those  
20 components that the association would use to complete disclosures  
21 and reserve reports required under this article and Section 5300.  
22 An association may rely upon information received from a  
23 community service organization, and shall provide access to the  
24 information pursuant to the provisions of Article 5 (commencing  
25 with Section 5200) of Chapter 6.

26  
27 CHAPTER 8. ASSESSMENTS AND ASSESSMENT COLLECTION

28  
29 Article 1. Establishment and Imposition of Assessments  
30

31 5600. (a) Except as provided in Section 5605, the association  
32 shall levy regular and special assessments sufficient to perform its  
33 obligations under the governing documents and this act.

34 (b) An association shall not impose or collect an assessment or  
35 fee that exceeds the amount necessary to defray the costs for which  
36 it is levied.

37 5605. (a) Annual increases in regular assessments for any  
38 fiscal year shall not be imposed unless the board has complied  
39 with paragraphs (1), (2), (4), (5), (6), (7), and (8) of subdivision  
40 (b) of Section 5300 with respect to that fiscal year, or has obtained

1 the approval of a majority of a quorum of members, pursuant to  
2 Section 4070, at a member meeting or election.

3 (b) Notwithstanding more restrictive limitations placed on the  
4 board by the governing documents, the board may not impose a  
5 regular assessment that is more than 20 percent greater than the  
6 regular assessment for the association's preceding fiscal year or  
7 impose special assessments which in the aggregate exceed 5 percent  
8 of the budgeted gross expenses of the association for that fiscal  
9 year without the approval of a majority of a quorum of members,  
10 pursuant to Section 4070, at a member meeting or election.

11 (c) For the purposes of this section, "quorum" means more than  
12 50 percent of the members.

13 5610. Section 5605 does not limit assessment increases  
14 necessary for emergency situations. For purposes of this section,  
15 an emergency situation is any one of the following:

16 (a) An extraordinary expense required by an order of a court.

17 (b) An extraordinary expense necessary to repair or maintain  
18 the common interest development or any part of it for which the  
19 association is responsible where a threat to personal safety on the  
20 property is discovered.

21 (c) An extraordinary expense necessary to repair or maintain  
22 the common interest development or any part of it for which the  
23 association is responsible that could not have been reasonably  
24 foreseen by the board in preparing and distributing the annual  
25 budget report under Section 5300. However, prior to the imposition  
26 or collection of an assessment under this subdivision, the board  
27 shall pass a resolution containing written findings as to the  
28 necessity of the extraordinary expense involved and why the  
29 expense was not or could not have been reasonably foreseen in  
30 the budgeting process, and the resolution shall be distributed to  
31 the members with the notice of assessment.

32 5615. The association shall provide individual notice pursuant  
33 to Section 4040 to the members of any increase in the regular or  
34 special assessments of the association, not less than 30 nor more  
35 than 60 days prior to the increased assessment becoming due.

36 5620. (a) Regular assessments imposed or collected to perform  
37 the obligations of an association under the governing documents  
38 or this act shall be exempt from execution by a judgment creditor  
39 of the association only to the extent necessary for the association  
40 to perform essential services, such as paying for utilities and



1 insurance. In determining the appropriateness of an exemption, a  
2 court shall ensure that only essential services are protected under  
3 this subdivision.

4 (b) This exemption shall not apply to any consensual pledges,  
5 liens, or encumbrances that have been approved by a majority of  
6 a quorum of members, pursuant to Section 4070, at a member  
7 meeting or election, or to any state tax lien, or to any lien for labor  
8 or materials supplied to the common area.

9 5625. (a) Except as provided in subdivision (b),  
10 notwithstanding any provision of this act or the governing  
11 documents to the contrary, an association shall not levy assessments  
12 on separate interests within the common interest development  
13 based on the taxable value of the separate interests unless the  
14 association, on or before December 31, 2009, in accordance with  
15 its governing documents, levied assessments on those separate  
16 interests based on their taxable value, as determined by the tax  
17 assessor of the county in which the separate interests are located.

18 (b) An association that is responsible for paying taxes on the  
19 separate interests within the common interest development may  
20 levy that portion of assessments on separate interests that is related  
21 to the payment of taxes based on the taxable value of the separate  
22 interest, as determined by the tax assessor.

## 23 24 Article 2. Assessment Payment and Delinquency 25

26 5650. (a) A regular or special assessment and any late charges,  
27 reasonable fees and costs of collection, reasonable attorney's fees,  
28 if any, and interest, if any, as determined in accordance with  
29 subdivision (b), shall be a debt of the owner of the separate interest  
30 at the time the assessment or other sums are levied.

31 (b) Regular and special assessments levied pursuant to the  
32 governing documents are delinquent 15 days after they become  
33 due, unless the declaration provides a longer time period, in which  
34 case the longer time period shall apply. If an assessment is  
35 delinquent, the association may recover all of the following:

36 (1) Reasonable costs incurred in collecting the delinquent  
37 assessment, including reasonable attorney's fees.

38 (2) A late charge not exceeding 10 percent of the delinquent  
39 assessment or ten dollars (\$10), whichever is greater, unless the  
40 declaration specifies a late charge in a smaller amount, in which

1 case any late charge imposed shall not exceed the amount specified  
2 in the declaration.

3 (3) Interest on all sums imposed in accordance with this section,  
4 including the delinquent assessments, reasonable fees and costs  
5 of collection, and reasonable attorney's fees, at an annual interest  
6 rate not to exceed 12 percent, commencing 30 days after the  
7 assessment becomes due, unless the declaration specifies the  
8 recovery of interest at a rate of a lesser amount, in which case the  
9 lesser rate of interest shall apply.

10 (c) Associations are hereby exempted from interest-rate  
11 limitations imposed by Article XV of the California Constitution,  
12 subject to the limitations of this section.

13 5655. (a) Any payments made by the owner of a separate  
14 interest toward a debt described in subdivision (a) of Section 5650  
15 shall first be applied to the assessments owed, and, only after the  
16 assessments owed are paid in full shall the payments be applied  
17 to the fees and costs of collection, attorney's fees, late charges, or  
18 interest.

19 (b) When an owner makes a payment, the owner may request  
20 a receipt and the association shall provide it. The receipt shall  
21 indicate the date of payment and the person who received it.

22 (c) The association shall provide a mailing address for overnight  
23 payment of assessments. The address shall be provided in the  
24 annual policy statement.

25 5658. (a) If a dispute exists between the owner of a separate  
26 interest and the association regarding any disputed charge or sum  
27 levied by the association, including, but not limited to, an  
28 assessment, fine, penalty, late fee, collection cost, or monetary  
29 penalty imposed as a disciplinary measure, and the amount in  
30 dispute does not exceed the jurisdictional limits of the small claims  
31 court stated in Sections 116.220 and 116.221 of the Code of Civil  
32 Procedure, the owner of the separate interest may, in addition to  
33 pursuing dispute resolution pursuant to Article 3 (commencing  
34 with Section 5925) of Chapter 10, pay under protest the disputed  
35 amount and all other amounts levied, including any fees and  
36 reasonable costs of collection, reasonable attorney's fees, late  
37 charges, and interest, if any, pursuant to subdivision (b) of Section  
38 5650, and commence an action in small claims court pursuant to  
39 Chapter 5.5 (commencing with Section 116.110) of Title 1 of the  
40 Code of Civil Procedure.

1 (b) Nothing in this section shall impede an association's ability  
2 to collect delinquent assessments as provided in this article or  
3 Article 3 (commencing with Section 5700).

4 5660. At least 30 days prior to recording a lien upon the  
5 separate interest of the owner of record to collect a debt that is past  
6 due under Section 5650, the association shall notify the owner of  
7 record in writing by certified mail of the following:

8 (a) A general description of the collection and lien enforcement  
9 procedures of the association and the method of calculation of the  
10 amount, a statement that the owner of the separate interest has the  
11 right to inspect the association records pursuant to Section 5205,  
12 and the following statement in 14-point boldface type, if printed,  
13 or in capital letters, if typed:

14 "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST  
15 IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND  
16 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT  
17 COURT ACTION."

18 (b) An itemized statement of the charges owed by the owner,  
19 including items on the statement which indicate the amount of any  
20 delinquent assessments, the fees and reasonable costs of collection,  
21 reasonable attorney's fees, any late charges, and interest, if any.

22 (c) A statement that the owner shall not be liable to pay the  
23 charges, interest, and costs of collection, if it is determined the  
24 assessment was paid on time to the association.

25 (d) The right to request a meeting with the board as provided  
26 in Section 5665.

27 (e) The right to dispute the assessment debt by submitting a  
28 written request for dispute resolution to the association pursuant  
29 to the association's "meet and confer" program required in Article  
30 2 (commencing with Section 5900) of Chapter 10.

31 (f) The right to request alternative dispute resolution with a  
32 neutral third party pursuant to Article 3 (commencing with Section  
33 5925) of Chapter 10 before the association may initiate foreclosure  
34 against the owner's separate interest, except that binding arbitration  
35 shall not be available if the association intends to initiate a judicial  
36 foreclosure.

37 5665. (a) An owner, other than an owner of any interest that  
38 is described in Section 11212 of the Business and Professions Code  
39 that is not otherwise exempt from this section pursuant to  
40 subdivision (a) of Section 11211.7 of the Business and Professions

1 Code, may submit a written request to meet with the board to  
2 discuss a payment plan for the debt noticed pursuant to Section  
3 5660. The association shall provide the owners the standards for  
4 payment plans, if any ~~exist~~ *exists*.

5 (b) The board shall meet with the owner in executive session  
6 within 45 days of the postmark of the request, if the request is  
7 mailed within 15 days of the date of the postmark of the notice,  
8 unless there is no regularly scheduled board meeting within that  
9 period, in which case the board may designate a committee of one  
10 or more directors to meet with the owner.

11 (c) Payment plans may incorporate any assessments that accrue  
12 during the payment plan period. Additional late fees shall not  
13 accrue during the payment plan period if the owner is in  
14 compliance with the terms of the payment plan.

15 (d) Payment plans shall not impede an association's ability to  
16 record a lien on the owner's separate interest to secure payment  
17 of delinquent assessments.

18 (e) In the event of a default on any payment plan, the association  
19 may resume its efforts to collect the delinquent assessments from  
20 the time prior to entering into the payment plan.

21 5670. Prior to recording a lien for delinquent assessments, an  
22 association shall offer the owner and, if so requested by the owner,  
23 participate in dispute resolution pursuant to the association's "meet  
24 and confer" program required in Article 2 (commencing with  
25 Section 5900) of Chapter 10.

26 5673. For liens recorded on or after January 1, 2006, the  
27 decision to record a lien for delinquent assessments shall be made  
28 only by the board and may not be delegated to an agent of the  
29 association. The board shall approve the decision by a majority  
30 vote of the directors in an open meeting. The board shall record  
31 the vote in the minutes of that meeting.

32 5675. (a) The amount of the assessment, plus any costs of  
33 collection, late charges, and interest assessed in accordance with  
34 subdivision (b) of Section 5650, shall be a lien on the owner's  
35 separate interest in the common interest development from and  
36 after the time the association causes to be recorded with the county  
37 recorder of the county in which the separate interest is located, a  
38 notice of delinquent assessment, which shall state the amount of  
39 the assessment and other sums imposed in accordance with  
40 subdivision (b) of Section 5650, a legal description of the owner's

1 separate interest in the common interest development against which  
2 the assessment and other sums are levied, and the name of the  
3 record owner of the separate interest in the common interest  
4 development against which the lien is imposed.

5 (b) The itemized statement of the charges owed by the owner  
6 described in subdivision (b) of Section 5660 shall be recorded  
7 together with the notice of delinquent assessment.

8 (c) In order for the lien to be enforced by nonjudicial foreclosure  
9 as provided in Sections 5700 to 5710, inclusive, the notice of  
10 delinquent assessment shall state the name and address of the  
11 trustee authorized by the association to enforce the lien by sale.

12 (d) The notice of delinquent assessment shall be signed by the  
13 person designated in the declaration or by the association for that  
14 purpose, or if no one is designated, by the president of the  
15 association.

16 (e) A copy of the recorded notice of delinquent assessment shall  
17 be mailed by certified mail to every person whose name is shown  
18 as an owner of the separate interest in the association's records,  
19 and the notice shall be mailed no later than 10 calendar days after  
20 recordation.

21 5680. A lien created pursuant to Section 5675 shall be prior to  
22 all other liens recorded subsequent to the notice of delinquent  
23 assessment, except that the declaration may provide for the  
24 subordination thereof to any other liens and encumbrances.

25 5685. (a) Within 21 days of the payment of the sums specified  
26 in the notice of delinquent assessment, the association shall record  
27 or cause to be recorded in the office of the county recorder in which  
28 the notice of delinquent assessment is recorded a lien release or  
29 notice of rescission and provide the owner of the separate interest  
30 a copy of the lien release or notice that the delinquent assessment  
31 has been satisfied.

32 (b) If it is determined that a lien previously recorded against the  
33 separate interest was recorded in error, the party who recorded the  
34 lien shall, within 21 calendar days, record or cause to be recorded  
35 in the office of the county recorder in which the notice of  
36 delinquent assessment is recorded a lien release or notice of  
37 rescission and provide the owner of the separate interest with a  
38 declaration that the lien filing or recording was in error and a copy  
39 of the lien release or notice of rescission.

(c) If it is determined that an association has recorded a lien for a delinquent assessment in error, the association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice prescribed in Section 5660, and costs of recordation and release of the lien authorized under subdivision (b) of Section 5720, and pay all costs related to any related dispute resolution or alternative dispute resolution.

5690. An association that fails to comply with the procedures set forth in this article shall, prior to recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

### Article 3. Assessment Collection

5700. (a) Except as otherwise provided in this article, after the expiration of 30 days following the recording of a lien created pursuant to Section 5675, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a.

(b) Nothing in Article 2 (commencing with Section 5650) or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to Article 2 (commencing with Section 5650) or prohibits an association from taking a deed in lieu of foreclosure.

5705. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 2 (commencing with Section 5900) of Chapter 10 or alternative dispute resolution as set forth in Article 3 (commencing with Section 5925) of Chapter 10. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall

1 not be available if the association intends to initiate a judicial  
2 foreclosure.

3 (c) The decision to initiate foreclosure of a lien for delinquent  
4 assessments that has been validly recorded shall be made only by  
5 the board and may not be delegated to an agent of the association.  
6 The board shall approve the decision by a majority vote of the  
7 directors in an executive session. The board shall record the vote  
8 in the minutes of the next meeting of the board open to all  
9 members. The board shall maintain the confidentiality of the owner  
10 or owners of the separate interest by identifying the matter in the  
11 minutes by the parcel number of the property, rather than the name  
12 of the owner or owners. A board vote to approve foreclosure of a  
13 lien shall take place at least 30 days prior to any public sale.

14 (d) The board shall provide notice by personal service in  
15 accordance with the manner of service of summons in Article 3  
16 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part  
17 2 of the Code of Civil Procedure to an owner of a separate interest  
18 who occupies the separate interest or to the owner's legal  
19 representative, if the board votes to foreclose upon the separate  
20 interest. The board shall provide written notice to an owner of a  
21 separate interest who does not occupy the separate interest by  
22 first-class mail, postage prepaid, at the most current address shown  
23 on the books of the association. In the absence of written  
24 notification by the owner to the association, the address of the  
25 owner's separate interest may be treated as the owner's mailing  
26 address.

27 5710. (a) Any sale by the trustee shall be conducted in  
28 accordance with Sections 2924, 2924b, and 2924c applicable to  
29 the exercise of powers of sale in mortgages and deeds of trust.

30 (b) In addition to the requirements of Section 2924, the  
31 association shall serve a notice of default on the person named as  
32 the owner of the separate interest in the association's records or,  
33 if that person has designated a legal representative pursuant to this  
34 subdivision, on that legal representative. Service shall be in  
35 accordance with the manner of service of summons in Article 3  
36 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part  
37 2 of the Code of Civil Procedure. An owner may designate a legal  
38 representative in a writing that is mailed to the association in a  
39 manner that indicates that the association has received it.

(c) The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d, plus the cost of service for either of the following:

(1) The notice of default pursuant to subdivision (b).

(2) The decision of the board to foreclose upon the separate interest of an owner as described in subdivision (d) of Section 5705.

5715. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of Section 2924f, a notice of sale in connection with an association's foreclosure of a separate interest in a common interest development shall include a statement that the property is being sold subject to the right of redemption created in this section.

5720. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:



1 (A) The amount owed as of the date of filing the complaint in  
2 the small claims court proceeding.

3 (B) In the discretion of the court, an additional amount to that  
4 described in subparagraph (A) equal to the amount owed for the  
5 period from the date the complaint is filed until satisfaction of the  
6 judgment, which total amount may include accruing unpaid  
7 assessments and any reasonable late charges, fees and costs of  
8 collection, attorney's fees, and interest, up to the jurisdictional  
9 limits of the small claims court.

10 (2) By recording a lien on the owner's separate interest upon  
11 which the association may not foreclose until the amount of the  
12 delinquent assessments secured by the lien, exclusive of any  
13 accelerated assessments, late charges, fees and costs of collection,  
14 attorney's fees, or interest, equals or exceeds one thousand eight  
15 hundred dollars (\$1,800) or the assessments secured by the lien  
16 are more than 12 months delinquent. An association that chooses  
17 to record a lien under these provisions, prior to recording the lien,  
18 shall offer the owner and, if so requested by the owner, participate  
19 in dispute resolution as set forth in Article 2 (commencing with  
20 Section 5900) of Chapter 10.

21 (3) Any other manner provided by law, except for judicial or  
22 nonjudicial foreclosure.

23 (c) The limitation on foreclosure of assessment liens for amounts  
24 under the stated minimum in this section does not apply to any of  
25 the following:

26 (1) Assessments secured by a lien that are more than 12 months  
27 delinquent.

28 (2) Assessments owed by owners of separate interests in  
29 ~~timeshare~~ *time-share* estates, as defined in subdivision (x) of  
30 Section 11212 of the Business and Professions Code.

31 (3) Assessments owed by the developer.

32 5725. (a) A monetary charge imposed by the association as a  
33 means of reimbursing the association for costs incurred by the  
34 association in the repair of damage to common area and facilities  
35 caused by a member or the member's guest or tenant may become  
36 a lien against the member's separate interest enforceable by the  
37 sale of the interest under Sections 2924, 2924b, and 2924c,  
38 provided the authority to impose a lien is set forth in the governing  
39 documents. It is the intent of the Legislature not to contravene  
40 Section 2792.26 of Title 10 of the California Code of Regulations,

1 as that section appeared on January 1, 1996, for associations of  
2 subdivisions that are being sold under authority of a subdivision  
3 public report, pursuant to Part 2 (commencing with Section 11000)  
4 of Division 4 of the Business and Professions Code.

5 (b) A monetary penalty imposed by the association as a  
6 disciplinary measure for failure of a member to comply with the  
7 governing documents, except for the late payments, may not be  
8 characterized nor treated in the governing documents as an  
9 assessment that may become a lien against the member's separate  
10 interest enforceable by the sale of the interest under Sections 2924,  
11 2924b, and 2924c.

12 5730. (a) The annual policy statement, prepared pursuant to  
13 Section 5310, shall include the following notice, in at least 12-point  
14 type:

15 "NOTICE ASSESSMENTS AND FORECLOSURE

16 This notice outlines some of the rights and responsibilities of  
17 owners of property in common interest developments and the  
18 associations that manage them. Please refer to the sections of the  
19 Civil Code indicated for further information. A portion of the  
20 information in this notice applies only to liens recorded on or after  
21 January 1, 2003. You may wish to consult a lawyer if you dispute  
22 an assessment.

23 ASSESSMENTS AND FORECLOSURE

24 Assessments become delinquent 15 days after they are due,  
25 unless the governing documents provide for a longer time. The  
26 failure to pay association assessments may result in the loss of an  
27 owner's property through foreclosure. Foreclosure may occur  
28 either as a result of a court action, known as ~~judicial foreclosure, or~~  
29 *foreclosure, or* without court action, often referred to as nonjudicial  
30 foreclosure. For liens recorded on and after January 1, 2006, an  
31 association may not use judicial or nonjudicial foreclosure to  
32 enforce that lien if the amount of the delinquent assessments or  
33 dues, exclusive of any accelerated assessments, late charges, fees,  
34 attorney's fees, interest, and costs of collection, is less than one  
35 thousand eight hundred dollars (\$1,800). For delinquent  
36 assessments or dues in excess of one thousand eight hundred dollars  
37 (\$1,800) or more than 12 months delinquent, an association may  
38 use judicial or nonjudicial foreclosure subject to the conditions set  
39 forth in Article 3 (commencing with Section 5700) of Chapter 8  
40 of Part 5 of Division 4 of the Civil Code. When using judicial or

1 nonjudicial foreclosure, the association records a lien on the  
2 owner's property. The owner's property may be sold to satisfy the  
3 lien if the amounts secured by the lien are not paid. (Sections 5700  
4 through 5720 of the Civil Code, inclusive)

5 In a judicial or nonjudicial foreclosure, the association may  
6 recover assessments, reasonable costs of collection, reasonable  
7 attorney's fees, late charges, and interest. The association may not  
8 use nonjudicial foreclosure to collect fines or penalties, except for  
9 costs to repair common area damaged by a member or a member's  
10 guests, if the governing documents provide for this. (Section 5725  
11 of the Civil Code)

12 The association must comply with the requirements of Article  
13 2 (commencing with Section 5650) of Chapter 8 of Part 5 of  
14 Division 4 of the Civil Code when collecting delinquent  
15 assessments. If the association fails to follow these requirements,  
16 it may not record a lien on the owner's property until it has satisfied  
17 those requirements. Any additional costs that result from satisfying  
18 the requirements are the responsibility of the association. (Section  
19 5675 of the Civil Code)

20 At least 30 days prior to recording a lien on an owner's separate  
21 interest, the association must provide the owner of record with  
22 certain documents by certified mail, including a description of its  
23 collection and lien enforcement procedures and the method of  
24 calculating the amount. It must also provide an itemized statement  
25 of the charges owed by the owner. An owner has a right to review  
26 the association's records to verify the debt. (Section 5660 of the  
27 Civil Code)

28 If a lien is recorded against an owner's property in error, the  
29 person who recorded the lien is required to record a lien release  
30 within 21 days, and to provide an owner certain documents in this  
31 regard. (Section 5685 of the Civil Code)

32 The collection practices of the association may be governed by  
33 state and federal laws regarding fair debt collection. Penalties can  
34 be imposed for debt collection practices that violate these laws.

#### 35 PAYMENTS

36 When an owner makes a payment, the owner may request a  
37 receipt, and the association is required to provide it. On the receipt,  
38 the association must indicate the date of payment and the person  
39 who received it. The association must inform owners of a mailing  
40 address for overnight payments. (Section 5655 of the Civil Code)

1 An owner may, but is not obligated to, pay under protest any  
2 disputed charge or sum levied by the association, including, but  
3 not limited to, an assessment, fine, penalty, late fee, collection  
4 cost, or monetary penalty imposed as a disciplinary measure, and  
5 by so doing, specifically reserve the right to contest the disputed  
6 charge or sum in court or otherwise.

7 An owner may dispute an assessment debt by submitting a  
8 written request for dispute resolution to the association as set forth  
9 in Article 2 (commencing with Section 5900) of Chapter 10 of  
10 Part 5 of Division 4 of the Civil Code. In addition, an association  
11 may not initiate a foreclosure without participating in alternative  
12 dispute resolution with a neutral third party as set forth in Article  
13 3 (commencing with Section 5925) of Chapter 10 of Part 5 of  
14 Division 4 of the Civil Code, if so requested by the owner. Binding  
15 arbitration shall not be available if the association intends to initiate  
16 a judicial foreclosure.

17 An owner is not liable for charges, interest, and costs of  
18 collection, if it is established that the assessment was paid properly  
19 on time. (Section 5685 of the Civil Code)

#### 20 MEETINGS AND PAYMENT PLANS

21 An owner of a separate interest that is not a ~~timeshare~~ *time-share*  
22 *interest* may request the association to consider a payment plan to  
23 satisfy a delinquent assessment. The association must inform  
24 owners of the standards for payment plans, if any ~~exist~~ *exists*.  
25 (Section 5665 of the Civil Code)

26 The board must meet with an owner who makes a proper written  
27 request for a meeting to discuss a payment plan when the owner  
28 has received a notice of a delinquent assessment. These payment  
29 plans must conform with the payment plan standards of the  
30 association, if they exist. (Section 5665 of the Civil Code)”

31 (b) An association distributing the notice required by this section  
32 to an owner of an interest that is described in Section 11212 of the  
33 Business and Professions Code that is not otherwise exempt from  
34 this section pursuant to subdivision (a) of Section 11211.7 of the  
35 Business and Professions Code may delete from the notice  
36 described in subdivision (a) the portion regarding meetings and  
37 payment plans.

38 5735. (a) An association may not voluntarily assign or pledge  
39 the association’s right to collect payments or assessments, or to  
40 enforce or foreclose a lien to a third party, except when the

1 assignment or pledge is made to a financial institution or lender  
2 chartered or licensed under federal or state law, when acting within  
3 the scope of that charter or license, as security for a loan obtained  
4 by the association.

5 (b) Nothing in subdivision (a) restricts the right or ability of an  
6 association to assign any unpaid obligations of a former member  
7 to a third party for purposes of collection.

8 5740. (a) Except as otherwise provided, this article applies to  
9 a lien created on or after January 1, 2003.

10 (b) A lien created before January 1, 2003, is governed by the  
11 law in existence at the time the lien was created.

12  
13 CHAPTER 9. INSURANCE AND LIABILITY  
14

15 5800. (a) A volunteer officer or volunteer director of an  
16 association that manages a common interest development that is  
17 exclusively residential, shall not be personally liable in excess of  
18 the coverage of insurance specified in paragraph (4) to any person  
19 who suffers injury, including, but not limited to, bodily injury,  
20 emotional distress, wrongful death, or property damage or loss as  
21 a result of the tortious act or omission of the volunteer officer or  
22 volunteer director if all of the following criteria are met:

23 (1) The act or omission was performed within the scope of the  
24 officer's or director's association duties.

25 (2) The act or omission was performed in good faith.

26 (3) The act or omission was not willful, wanton, or grossly  
27 negligent.

28 (4) The association maintained and had in effect at the time the  
29 act or omission occurred and at the time a claim is made one or  
30 more policies of insurance that shall include coverage for (A)  
31 general liability of the association and (B) individual liability of  
32 officers and directors of the association for negligent acts or  
33 omissions in that capacity; provided, that both types of coverage  
34 are in the following minimum-amount amounts:

35 (A) At least five hundred thousand dollars (\$500,000) if the  
36 common interest development consists of 100 or fewer separate  
37 interests.

38 (B) At least one million dollars (\$1,000,000) if the common  
39 interest development consists of more than 100 separate interests.

1 (b) The payment of actual expenses incurred by a director or  
2 officer in the execution of the duties of that position does not affect  
3 the director's or officer's status as a volunteer within the meaning  
4 of this section.

5 (c) An officer or director who at the time of the act or omission  
6 was a declarant, or who received either direct or indirect  
7 compensation as an employee from the declarant, or from a  
8 financial institution that purchased a separate interest at a judicial  
9 or nonjudicial foreclosure of a mortgage or deed of trust on real  
10 property, is not a volunteer for the purposes of this section.

11 (d) Nothing in this section shall be construed to limit the liability  
12 of the association for its negligent act or omission or for any  
13 negligent act or omission of an officer or director of the association.

14 (e) This section shall only apply to a volunteer officer or director  
15 who is a tenant of a separate interest in the common interest  
16 development or is an owner of no more than two separate interests  
17 in the common interest development.

18 (f) (1) For purposes of paragraph (1) of subdivision (a), the  
19 scope of the officer's or director's association duties shall include,  
20 but shall not be limited to, both of the following decisions:

21 (A) Whether to conduct an investigation of the common interest  
22 development for latent deficiencies prior to the expiration of the  
23 applicable statute of limitations.

24 (B) Whether to commence a civil action against the builder for  
25 defects in design or construction.

26 (2) It is the intent of the Legislature that this section clarify the  
27 scope of association duties to which the protections against  
28 personal liability in this section apply. It is not the intent of the  
29 Legislature that these clarifications be construed to expand, or  
30 limit, the fiduciary duties owed by the directors or officers.

31 5805. (a) It is the intent of the Legislature to offer civil liability  
32 protection to owners of the separate interests in a common interest  
33 development that have common area owned in tenancy-in-common  
34 if the association carries a certain level of prescribed insurance  
35 that covers a cause of action in tort.

36 (b) Any cause of action in tort against any owner of a separate  
37 interest arising solely by reason of an ownership interest as a ~~tenant~~  
38 ~~in-common~~ *tenant-in-common* in the common area of a common  
39 interest development shall be brought only against the association  
40 and not against the individual owners of the separate interests, if

1 both of the insurance requirements in paragraphs (1) and (2) are  
2 met:

3 (1) The association maintained and has in effect for this cause  
4 of action, one or more policies of insurance that include coverage  
5 for general liability of the association.

6 (2) The coverage described in paragraph (1) is in the following  
7 minimum amounts:

8 (A) At least two million dollars (\$2,000,000) if the common  
9 interest development consists of 100 or fewer separate interests.

10 (B) At least three million dollars (\$3,000,000) if the common  
11 interest development consists of more than 100 separate interests.

12 5810. The association shall, as soon as reasonably practicable,  
13 provide individual notice pursuant to Section 4040 to all members  
14 if any of the policies described in the annual budget report pursuant  
15 to Section 5300 have lapsed, been canceled, and are not  
16 immediately renewed, restored, or replaced, or if there is a  
17 significant change, such as a reduction in coverage or limits or an  
18 increase in the deductible, as to any of those policies. If the  
19 association receives any notice of nonrenewal of a policy described  
20 in the annual budget report pursuant to Section 5300, the  
21 association shall immediately notify its members if replacement  
22 coverage will not be in effect by the date the existing coverage  
23 will lapse.

24  
25 CHAPTER 10. DISPUTE RESOLUTION AND ENFORCEMENT

26  
27 Article 1. Discipline and Cost Reimbursement

28  
29 5850. (a) If an association adopts or has adopted a policy  
30 imposing any monetary penalty, including any fee, on any  
31 association member for a violation of the governing documents,  
32 including any monetary penalty relating to the activities of a guest  
33 or tenant of the member, the board shall adopt and distribute to  
34 each member, in the annual policy statement prepared pursuant to  
35 Section 5310, a schedule of the monetary penalties that may be  
36 assessed for those violations, which shall be in accordance with  
37 authorization for member discipline contained in the governing  
38 documents.

39 (b) Any new or revised monetary penalty that is adopted after  
40 complying with subdivision (a) may be included in a supplement

1 that is delivered to the members individually, pursuant to Section  
2 4040.

3 (c) A monetary penalty for a violation of the governing  
4 documents shall not exceed the monetary penalty stated in the  
5 schedule of monetary penalties or supplement that is in effect at  
6 the time of the violation.

7 (d) An association shall provide a copy of the most recently  
8 distributed schedule of monetary penalties, along with any  
9 applicable supplements to that schedule, to any member ~~on~~ upon  
10 request.

11 5855. (a) When the board is to meet to consider or impose  
12 discipline upon a member, or to impose a monetary charge as a  
13 means of reimbursing the association for costs incurred by the  
14 association in the repair of damage to common area and facilities  
15 caused by a member or the member's guest or tenant, the board  
16 shall notify the member in writing, by either personal delivery or  
17 individual delivery pursuant to Section 4040, at least 10 days prior  
18 to the meeting.

19 (b) The notification shall contain, at a minimum, the date, time,  
20 and place of the meeting, the nature of the alleged violation for  
21 which a member may be disciplined or the nature of the damage  
22 to the common area and facilities for which a monetary charge  
23 may be imposed, and a statement that the member has a right to  
24 attend and may address the board at the meeting. The board shall  
25 meet in executive session if requested by the member.

26 (c) If the board imposes discipline on a member or imposes a  
27 monetary charge on the member for damage to the common area  
28 and facilities, the board shall provide the member a written  
29 notification of the decision, by either personal delivery or  
30 individual delivery pursuant to Section 4040, within 15 days  
31 following the action.

32 (d) A disciplinary action or the imposition of a monetary charge  
33 for damage to the common area shall not be effective against a  
34 member unless the board fulfills the requirements of this section.

35 5865. Nothing in Section 5850 or 5855 shall be construed to  
36 create, expand, or reduce the authority of the board to impose  
37 monetary penalties on a member for a violation of the governing  
38 documents.



Article 2. Internal Dispute Resolution

5900. (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this act, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

(b) This article supplements, and does not replace, Article 3 (commencing with Section 5925), relating to alternative dispute resolution as a prerequisite to an enforcement action.

5905. (a) An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article.

(b) In developing a procedure pursuant to this article, an association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.

(c) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 5915 applies and satisfies the requirement of subdivision (a).

5910. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the board.

(e) A resolution of a dispute pursuant to the procedure, which is not in conflict with the law or the governing documents, binds

1 the association and is judicially enforceable. An agreement reached  
2 pursuant to the procedure, which is not in conflict with the law or  
3 the governing documents, binds the parties and is judicially  
4 enforceable.

5 (f) The procedure shall provide a means by which the member  
6 and the association may explain their positions.

7 (g) A member of the association shall not be charged a fee to  
8 participate in the process.

9 5915. (a) This section applies to an association that does not  
10 otherwise provide a fair, reasonable, and expeditious dispute  
11 resolution procedure. The procedure provided in this section is  
12 fair, reasonable, and expeditious, within the meaning of this article.

13 (b) Either party to a dispute within the scope of this article may  
14 invoke the following procedure:

15 (1) The party may request the other party to meet and confer in  
16 an effort to resolve the dispute. The request shall be in writing.

17 (2) A member of an association may refuse a request to meet  
18 and confer. The association may not refuse a request to meet and  
19 confer.

20 (3) The board shall designate a director to meet and confer.

21 (4) The parties shall meet promptly at a mutually convenient  
22 time and place, explain their positions to each other, and confer  
23 in good faith in an effort to resolve the dispute.

24 (5) A resolution of the dispute agreed to by the parties shall be  
25 memorialized in writing and signed by the parties, including the  
26 board designee on behalf of the association.

27 (c) An agreement reached under this section binds the parties  
28 and is judicially enforceable if both of the following conditions  
29 are satisfied:

30 (1) The agreement is not in conflict with law or the governing  
31 documents of the common interest development or association.

32 (2) The agreement is either consistent with the authority granted  
33 by the board to its designee or the agreement is ratified by the  
34 board.

35 (d) A member may not be charged a fee to participate in the  
36 process.

37 5920. The annual policy statement prepared pursuant to Section  
38 5310 shall include a description of the internal dispute resolution  
39 process provided pursuant to this article.

Article 3. Alternative Dispute Resolution Prerequisite to Civil  
Action

5925. As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this act.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents.

5930. (a) An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

5935. (a) Any party to a dispute may initiate the process required by Section 5930 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

(2) A request for alternative dispute resolution.

(3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.

(4) If the party on whom the request is served is the member, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

5940. (a) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(c) The costs of the alternative dispute resolution shall be borne by the parties.

5945. If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

(a) The period provided in Section 5935 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 5940 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 5940.

5950. (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions ~~is~~ *are* satisfied:

(1) Alternative dispute resolution has been completed in compliance with this article.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

(3) Preliminary or temporary injunctive relief is necessary.

(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds

1 that dismissal of the action for failure to comply with this article  
2 would result in substantial prejudice to one of the parties.

3 5955. (a) After an enforcement action is commenced, on  
4 written stipulation of the parties, the matter may be referred to  
5 alternative dispute resolution. The referred action is stayed. During  
6 the stay, the action is not subject to the rules implementing  
7 subdivision (c) of Section 68603 of the Government Code.

8 (b) The costs of the alternative dispute resolution shall be borne  
9 by the parties.

10 5960. In an enforcement action in which attorney's fees and  
11 costs may be awarded, the court, in determining the amount of the  
12 award, may consider whether a party's refusal to participate in  
13 alternative dispute resolution before commencement of the action  
14 was reasonable.

15 5965. (a) An association shall annually provide its members  
16 a summary of the provisions of this article that specifically  
17 references this article. The summary shall include the following  
18 language:

19 "Failure of a member of the association to comply with the  
20 alternative dispute resolution requirements of Section 5930 of the  
21 Civil Code may result in the loss of the member's right to sue the  
22 association or another member of the association regarding  
23 enforcement of the governing documents or the applicable law."

24 (b) The summary shall be included in the annual policy  
25 statement prepared pursuant to Section 5310.

26  
27 Article 4. Civil Action  
28

29 5975. (a) The covenants and restrictions in the declaration  
30 shall be enforceable equitable servitudes, unless unreasonable, and  
31 shall inure to the benefit of and bind all owners of separate interests  
32 in the development. Unless the declaration states otherwise, these  
33 servitudes may be enforced by any owner of a separate interest or  
34 by the association, or by both.

35 (b) A governing document other than the declaration may be  
36 enforced by the association against an owner of a separate interest  
37 or by an owner of a separate interest against the association.

38 (c) In an action to enforce the governing documents, the  
39 prevailing party shall be awarded reasonable attorney's fees and  
40 costs.

1     5980. An association has standing to institute, defend, settle,  
2 or intervene in litigation, arbitration, mediation, or administrative  
3 proceedings in its own name as the real party in interest and without  
4 joining with it the members, in matters pertaining to the following:

5     (a) Enforcement of the governing documents.  
6     (b) Damage to the common area.  
7     (c) Damage to a separate interest that the association is obligated  
8 to maintain or repair.

9     (d) Damage to a separate interest that arises out of, or is  
10 integrally related to, damage to the common area or a separate  
11 interest that the association is obligated to maintain or repair.

12     5985. (a) In an action maintained by an association pursuant  
13 to subdivision (b), (c), or (d) of Section 5980, the amount of  
14 damages recovered by the association shall be reduced by the  
15 amount of damages allocated to the association or its managing  
16 agents in direct proportion to their percentage of fault based upon  
17 principles of comparative fault. The comparative fault of the  
18 association or its managing agents may be raised by way of  
19 defense, but shall not be the basis for a cross-action or separate  
20 action against the association or its managing agents for  
21 contribution or implied indemnity, where the only damage was  
22 sustained by the association or its members. It is the intent of the  
23 Legislature in enacting this subdivision to require that comparative  
24 fault be pleaded as an affirmative defense, rather than a separate  
25 cause of action, where the only damage was sustained by the  
26 association or its members.

27     (b) In an action involving damages described in subdivision (b),  
28 (c), or (d) of Section 5980, the defendant or cross-defendant may  
29 allege and prove the comparative fault of the association or its  
30 managing agents as a setoff to the liability of the defendant or  
31 cross-defendant even if the association is not a party to the  
32 litigation or is no longer a party whether by reason of settlement,  
33 dismissal, or otherwise.

34     (c) Subdivisions (a) and (b) apply to actions commenced on or  
35 after January 1, 1993.

36     (d) Nothing in this section affects a person's liability under  
37 Section 1431, or the liability of the association or its managing  
38 agent for an act or omission that causes damages to another.

CHAPTER 11. CONSTRUCTION DEFECT LITIGATION

6000. (a) Before an association files a complaint for damages against a builder, developer, or general contractor (~~“respondent”~~) (*respondent*) of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of this section shall be satisfied with respect to the builder, developer, or general contractor.

(b) The association shall serve upon the respondent a “Notice of Commencement of Legal Proceedings.” The notice shall be served by certified mail to the registered agent of the respondent, or if there is no registered agent, then to any officer of the respondent. If there are no current officers of the respondent, service shall be upon the person or entity otherwise authorized by law to receive service of process. Service upon the general contractor shall be sufficient to initiate the process set forth in this section with regard to any builder or developer, if the builder or developer is not amenable to service of process by the foregoing methods. This notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity applicable to the claim for the period set forth in subdivision (c). The notice shall include all of the following:

- (1) The name and location of the project.
- (2) An initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue.
- (3) A description of the results of the defects, if known.
- (4) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed.
- (5) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

(c) Service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through the processes set forth in this section. This 180-day period may be

1 extended for one additional period, not to exceed 180 days, only  
2 upon the mutual agreement of the association, the respondent, and  
3 any parties not deemed peripheral pursuant to paragraph (3) of  
4 subdivision (e). Any extensions beyond the first extension shall  
5 require the agreement of all participating parties. Unless extended,  
6 the dispute resolution process prescribed by this section shall be  
7 deemed completed. All extensions shall continue the tolling period  
8 described in subdivision (b).

9 (d) Within 25 days of the date the association serves the Notice  
10 of Commencement of Legal Proceedings, the respondent may  
11 request in writing to meet and confer with the board. Unless the  
12 respondent and the association otherwise agree, there shall be not  
13 more than one meeting, which shall take place no later than 10  
14 days from the date of the respondent's written request, at a mutually  
15 agreeable time and place. The meeting shall be subject to  
16 subdivision (a) of Section 4925 and subdivisions (a) and (b) of  
17 Section 4935. The discussions at the meeting are privileged  
18 communications and are not admissible in evidence in any civil  
19 action, unless the association and the respondent consent in writing  
20 to their admission.

21 (e) Upon receipt of the notice, the respondent shall, within 60  
22 days, comply with the following:

23 (1) The respondent shall provide the association with access to,  
24 for inspection and copying of, all plans and specifications,  
25 subcontracts, and other construction files for the project that are  
26 reasonably calculated to lead to the discovery of admissible  
27 evidence regarding the defects claimed. The association shall  
28 provide the respondent with access to, for inspection and copying  
29 of, all files reasonably calculated to lead to the discovery of  
30 admissible evidence regarding the defects claimed, including all  
31 reserve studies, maintenance records and any survey questionnaires,  
32 or results of testing to determine the nature and extent of defects.  
33 To the extent any of the above documents are withheld based on  
34 privilege, a privilege log shall be prepared and submitted to all  
35 other parties. All other potentially responsible parties shall have  
36 the same rights as the respondent regarding the production of  
37 documents upon receipt of written notice of the claim, and shall  
38 produce all relevant documents within 60 days of receipt of the  
39 notice of the claim.



1 (2) The respondent shall provide written notice by certified mail  
2 to all subcontractors, design professionals, their insurers, and the  
3 insurers of any additional insured whose identities are known to  
4 the respondent or readily ascertainable by review of the project  
5 files or other similar sources and whose potential responsibility  
6 appears on the face of the notice. This notice to subcontractors,  
7 design professionals, and insurers shall include a copy of the Notice  
8 of Commencement of Legal Proceedings, and shall specify the  
9 date and manner by which the parties shall meet and confer to  
10 select a dispute resolution facilitator pursuant to paragraph (1) of  
11 subdivision (f), advise the recipient of its obligation to participate  
12 in the meet and confer or serve a written acknowledgment of receipt  
13 regarding this notice, advise the recipient that it will waive any  
14 challenge to selection of the dispute resolution facilitator if it elects  
15 not to participate in the meet and confer, advise the recipient that  
16 it may seek the assistance of an attorney, and advise the recipient  
17 that it should contact its insurer, if any. Any subcontractor or design  
18 professional, or insurer for that subcontractor, design professional,  
19 or additional insured, who receives written notice from the  
20 respondent regarding the meet and confer shall, prior to the meet  
21 and confer, serve on the respondent a written acknowledgment of  
22 receipt. That subcontractor or design professional shall, within 10  
23 days of service of the written acknowledgment of receipt, provide  
24 to the association and the respondent a Statement of Insurance that  
25 includes both of the following:

26 (A) The names, addresses, and contact persons, if known, of all  
27 insurance carriers, whether primary or excess and regardless of  
28 whether a deductible or self-insured retention applies, whose  
29 policies were in effect from the commencement of construction  
30 of the subject project to the present and which potentially cover  
31 the subject claims.

32 (B) The applicable policy numbers for each policy of insurance  
33 provided.

34 (3) Any subcontractor or design professional, or insurer for that  
35 subcontractor, design professional, or additional insured, who so  
36 chooses, may, at any time, make a written request to the dispute  
37 resolution facilitator for designation as a peripheral party. That  
38 request shall be served contemporaneously on the association and  
39 the respondent. If no objection to that designation is received within  
40 15 days, or upon rejection of that objection, the dispute resolution

1 facilitator shall designate that subcontractor or design professional  
2 as a peripheral party, and shall thereafter seek to limit the  
3 attendance of that subcontractor or design professional only to  
4 those dispute resolution sessions deemed peripheral party sessions  
5 or to those sessions during which the dispute resolution facilitator  
6 believes settlement as to peripheral parties may be finalized.  
7 Nothing in this subdivision shall preclude a party who has been  
8 designated a peripheral party from being reclassified as a  
9 nonperipheral party, nor shall this subdivision preclude a party  
10 designated as a nonperipheral party from being reclassified as a  
11 peripheral party after notice to all parties and an opportunity to  
12 object. For purposes of this subdivision, a peripheral party is a  
13 party having total claimed exposure of less than twenty-five  
14 thousand dollars (\$25,000).

15 (f) (1) Within 20 days of sending the notice set forth in  
16 paragraph (2) of subdivision (e), the association, respondent,  
17 subcontractors, design professionals, and their insurers who have  
18 been sent a notice as described in paragraph (2) of subdivision (e)  
19 shall meet and confer in an effort to select a dispute resolution  
20 facilitator to preside over the mandatory dispute resolution process  
21 prescribed by this section. Any subcontractor or design professional  
22 who has been given timely notice of this meeting but who does  
23 not participate, waives any challenge he or she may have as to the  
24 selection of the dispute resolution facilitator. The role of the dispute  
25 resolution facilitator is to attempt to resolve the conflict in a fair  
26 manner. The dispute resolution facilitator shall be sufficiently  
27 knowledgeable in the subject matter and be able to devote sufficient  
28 time to the case. The dispute resolution facilitator shall not be  
29 required to reside in or have an office in the county in which the  
30 project is located. The dispute resolution facilitator and the  
31 participating parties shall agree to a date, time, and location to  
32 hold a case management meeting of all parties and the dispute  
33 resolution facilitator, to discuss the claims being asserted and the  
34 scheduling of events under this section. The case management  
35 meeting with the dispute resolution facilitator shall be held within  
36 100 days of service of the Notice of Commencement of Legal  
37 Proceedings at a location in the county where the project is located.  
38 Written notice of the case management meeting with the dispute  
39 resolution facilitator shall be sent by the respondent to the  
40 association, subcontractors and design professionals, and their

1 insurers who are known to the respondent to be on notice of the  
2 claim, no later than 10 days prior to the case management meeting,  
3 and shall specify its date, time, and location. The dispute resolution  
4 facilitator in consultation with the respondent shall maintain a  
5 contact list of the participating parties.

6 (2) No later than 10 days prior to the case management meeting,  
7 the dispute resolution facilitator shall disclose to the parties all  
8 matters that could cause a person aware of the facts to reasonably  
9 entertain a doubt that the proposed dispute resolution facilitator  
10 would be able to resolve the conflict in a fair manner. The  
11 facilitator's disclosure shall include the existence of any ground  
12 specified in Section 170.1 of the Code of Civil Procedure for  
13 disqualification of a judge, any attorney-client relationship the  
14 facilitator has or had with any party or lawyer for a party to the  
15 dispute resolution process, and any professional or significant  
16 personal relationship the facilitator or his or her spouse or minor  
17 child living in the household has or had with any party to the  
18 dispute resolution process. The disclosure shall also be provided  
19 to any subsequently noticed subcontractor or design professional  
20 within 10 days of the notice.

21 (3) A dispute resolution facilitator shall be disqualified by the  
22 court if he or she fails to comply with this subdivision and any  
23 party to the dispute resolution process serves a notice of  
24 disqualification prior to the case management meeting. If the  
25 dispute resolution facilitator complies with this subdivision, he or  
26 she shall be disqualified by the court on the basis of the disclosure  
27 if any party to the dispute resolution process serves a notice of  
28 disqualification prior to the case management meeting.

29 (4) If the parties cannot mutually agree to a dispute resolution  
30 facilitator, then each party shall submit a list of three dispute  
31 resolution facilitators. Each party may then strike one nominee  
32 from the other parties' list, and petition the court, pursuant to the  
33 procedure described in subdivisions (n) and (o), for final selection  
34 of the dispute resolution facilitator. The court may issue an order  
35 for final selection of the dispute resolution facilitator pursuant to  
36 this paragraph.

37 (5) Any subcontractor or design professional who receives notice  
38 of the association's claim without having previously received  
39 timely notice of the meet and confer to select the dispute resolution  
40 facilitator shall be notified by the respondent regarding the name,

1 address, and telephone number of the dispute resolution facilitator.  
2 Any such subcontractor or design professional may serve upon  
3 the parties and the dispute resolution facilitator a written objection  
4 to the dispute resolution facilitator within 15 days of receiving  
5 notice of the claim. Within seven days after service of this  
6 objection, the subcontractor or design professional may petition  
7 the superior court to replace the dispute resolution facilitator. The  
8 court may replace the dispute resolution facilitator only upon a  
9 showing of good cause, liberally construed. Failure to satisfy the  
10 deadlines set forth in this subdivision shall constitute a waiver of  
11 the right to challenge the dispute resolution facilitator.

12 (6) The costs of the dispute resolution facilitator shall be  
13 apportioned in the following manner: one-third to be paid by the  
14 association; one-third to be paid by the respondent; and one-third  
15 to be paid by the subcontractors and design professionals, as  
16 allocated among them by the dispute resolution facilitator. The  
17 costs of the dispute resolution facilitator shall be recoverable by  
18 the prevailing party in any subsequent litigation pursuant to Section  
19 1032 of the Code of Civil Procedure, provided however that any  
20 nonsettling party may, prior to the filing of the complaint, petition  
21 the facilitator to reallocate the costs of the dispute resolution  
22 facilitator as they apply to any nonsettling party. The determination  
23 of the dispute resolution facilitator with respect to the allocation  
24 of these costs shall be binding in any subsequent litigation. The  
25 dispute resolution facilitator shall take into account all relevant  
26 factors and equities between all parties in the dispute resolution  
27 process when reallocating costs.

28 (7) In the event the dispute resolution facilitator is replaced at  
29 any time, the case management statement created pursuant to  
30 subdivision (h) shall remain in full force and effect.

31 (8) The dispute resolution facilitator shall be empowered to  
32 enforce all provisions of this section.

33 (g) (1) No later than the case management meeting, the parties  
34 shall begin to generate a data compilation showing the following  
35 information regarding the alleged defects at issue:

36 (A) The scope of the work performed by each potentially  
37 responsible subcontractor.

38 (B) The tract or phase number in which each subcontractor  
39 provided goods or services, or both.

1 (C) The units, either by address, unit number, or lot number, at  
2 which each subcontractor provided goods or services, or both.

3 (2) This data compilation shall be updated as needed to reflect  
4 additional information. Each party attending the case management  
5 meeting, and any subsequent meeting pursuant to this section, shall  
6 provide all information available to that party relevant to this data  
7 compilation.

8 (h) At the case management meeting, the parties shall, with the  
9 assistance of the dispute resolution facilitator, reach agreement on  
10 a case management statement, which shall set forth all of the  
11 elements set forth in paragraphs (1) to (8), inclusive, except that  
12 the parties may dispense with one or more of these elements if  
13 they agree that it is appropriate to do so. The case management  
14 statement shall provide that the following elements shall take place  
15 in the following order:

16 (1) Establishment of a document depository, located in the  
17 county where the project is located, for deposit of documents,  
18 defect lists, demands, and other information provided for under  
19 this section. All documents exchanged by the parties and all  
20 documents created pursuant to this subdivision shall be deposited  
21 in the document depository, which shall be available to all parties  
22 throughout the prefiling dispute resolution process and in any  
23 subsequent litigation. When any document is deposited in the  
24 document depository, the party depositing the document shall  
25 provide written notice identifying the document to all other parties.  
26 The costs of maintaining the document depository shall be  
27 apportioned among the parties in the same manner as the costs of  
28 the dispute resolution facilitator.

29 (2) Provision of a more detailed list of defects by the association  
30 to the respondent after the association completes a visual inspection  
31 of the project. This list of defects shall provide sufficient detail  
32 for the respondent to ensure that all potentially responsible  
33 subcontractors and design professionals are provided with notice  
34 of the dispute resolution process. If not already completed prior  
35 to the case management meeting, the Notice of Commencement  
36 of Legal Proceedings shall be served by the respondent on all  
37 additional subcontractors and design professionals whose potential  
38 responsibility appears on the face of the more detailed list of  
39 defects within seven days of receipt of the more detailed list. The  
40 respondent shall serve a copy of the case management statement,

1 including the name, address, and telephone number of the dispute  
2 resolution facilitator, to all the potentially responsible  
3 subcontractors and design professionals at the same time.

4 (3) Nonintrusive visual inspection of the project by the  
5 respondent, subcontractors, and design professionals.

6 (4) Invasive testing conducted by the association, if the  
7 association deems appropriate. All parties may observe and  
8 photograph any testing conducted by the association pursuant to  
9 this paragraph, but may not take samples or direct testing unless,  
10 by mutual agreement, costs of testing are shared by the parties.

11 (5) Provision by the association of a comprehensive demand  
12 which provides sufficient detail for the parties to engage in  
13 meaningful dispute resolution as contemplated under this section.

14 (6) Invasive testing conducted by the respondent, subcontractors,  
15 and design professionals, if they deem appropriate.

16 (7) Allowance for modification of the demand by the association  
17 if new issues arise during the testing conducted by the respondent,  
18 subcontractor, or design professionals.

19 (8) Facilitated dispute resolution of the claim, with all parties,  
20 including peripheral parties, as appropriate, and insurers, if any,  
21 present and having settlement authority. The dispute resolution  
22 facilitators shall endeavor to set specific times for the attendance  
23 of specific parties at dispute resolution sessions. If the dispute  
24 resolution facilitator does not set specific times for the attendance  
25 of parties at dispute resolution sessions, the dispute resolution  
26 facilitator shall permit those parties to participate in dispute  
27 resolution sessions by telephone.

28 (i) In addition to the foregoing elements of the case management  
29 statement described in subdivision (h), upon mutual agreement of  
30 the parties, the dispute resolution facilitator may include any or  
31 all of the following elements in a case management statement: the  
32 exchange of consultant or expert photographs; expert presentations;  
33 expert meetings; or any other mechanism deemed appropriate by  
34 the parties in the interest of resolving the dispute.

35 (j) The dispute resolution facilitator, with the guidance of the  
36 parties, shall at the time the case management statement is  
37 established, set deadlines for the occurrence of each event set forth  
38 in the case management statement, taking into account such factors  
39 as the size and complexity of the case, and the requirement of this

1 section that this dispute resolution process not exceed 180 days  
2 absent agreement of the parties to an extension of time.

3 (k) (1) (A) At a time to be determined by the dispute resolution  
4 facilitator, the respondent may submit to the association all of the  
5 following:

6 (i) A request to meet with the board to discuss a written  
7 settlement offer.

8 (ii) A written settlement offer, and a concise explanation of the  
9 reasons for the terms of the offer.

10 (iii) A statement that the respondent has access to sufficient  
11 funds to satisfy the conditions of the settlement offer.

12 (iv) A summary of the results of testing conducted for the  
13 purposes of determining the nature and extent of defects, if this  
14 testing has been conducted, unless the association provided the  
15 respondent with actual test results.

16 (B) If the respondent does not timely submit the items required  
17 by this subdivision, the association shall be relieved of any further  
18 obligation to satisfy the requirements of this subdivision only.

19 (C) No less than 10 days after the respondent submits the items  
20 required by this paragraph, the respondent and the board shall meet  
21 and confer about the respondent's settlement offer.

22 (D) If the board rejects a settlement offer presented at the  
23 meeting held pursuant to this subdivision, the board shall hold a  
24 meeting open to each member of the association. The meeting  
25 shall be held no less than 15 days before the association  
26 commences an action for damages against the respondent.

27 (E) No less than 15 days before this meeting is held, a written  
28 notice shall be sent to each member of the association specifying  
29 all of the following:

30 (i) That a meeting will take place to discuss problems that may  
31 lead to the filing of a civil action, and the time and place of this  
32 meeting.

33 (ii) The options that are available to address the problems,  
34 including the filing of a civil action and a statement of the various  
35 alternatives that are reasonably foreseeable by the association to  
36 pay for those options and whether these payments are expected to  
37 be made from the use of reserve account funds or the imposition  
38 of regular or special assessments, or emergency assessment  
39 increases.

1 (iii) The complete text of any written settlement offer, and a  
2 concise explanation of the specific reasons for the terms of the  
3 offer submitted to the board at the meeting held pursuant to  
4 subdivision (d) that was received from the respondent.

5 (F) The respondent shall pay all expenses attributable to sending  
6 the settlement offer to all members of the association. The  
7 respondent shall also pay the expense of holding the meeting, not  
8 to exceed three dollars (\$3) per association member.

9 (G) The discussions at the meeting and the contents of the notice  
10 and the items required to be specified in the notice pursuant to  
11 ~~paragraph~~ *subparagraph* (E) are privileged communications and  
12 are not admissible in evidence in any civil action, unless the  
13 association consents to their admission.

14 (H) No more than one request to meet and discuss a written  
15 settlement offer may be made by the respondent pursuant to this  
16 subdivision.

17 (I) All defect lists and demands, communications, negotiations,  
18 and settlement offers made in the course of the prelitigation dispute  
19 resolution process provided by this section shall be inadmissible  
20 pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code  
21 and all applicable decisional law. This inadmissibility shall not be  
22 extended to any other documents or communications which would  
23 not otherwise be deemed inadmissible.

24 (m) Any subcontractor or design professional may, at any time,  
25 petition the dispute resolution facilitator to release that party from  
26 the dispute resolution process upon a showing that the  
27 subcontractor or design professional is not potentially responsible  
28 for the defect claims at issue. The petition shall be served  
29 contemporaneously on all other parties, who shall have 15 days  
30 from the date of service to object. If a subcontractor or design  
31 professional is released, and it later appears to the dispute  
32 resolution facilitator that it may be a responsible party in light of  
33 the current defect list or demand, the respondent shall renote the  
34 party as provided by paragraph (2) of subdivision (e), provide a  
35 copy of the current defect list or demand, and direct the party to  
36 attend a dispute resolution session at a stated time and location. A  
37 party who subsequently appears after having been released by the  
38 dispute resolution facilitator shall not be prejudiced by its absence  
39 from the dispute resolution process as the result of having been  
40 previously released by the dispute resolution facilitator.



1 (n) Any party may, at any time, petition the superior court in  
2 the county where the project is located, upon a showing of good  
3 cause, and the court may issue an order, for any of the following,  
4 or for appointment of a referee to resolve a dispute regarding any  
5 of the following:

6 (1) To take a deposition of any party to the process, or subpoena  
7 a third party for deposition or production of documents, which is  
8 necessary to further prelitigation resolution of the dispute.

9 (2) To resolve any disputes concerning inspection, testing,  
10 production of documents, or exchange of information provided  
11 for under this section.

12 (3) To resolve any disagreements relative to the timing or  
13 contents of the case management statement.

14 (4) To authorize internal extensions of timeframes set forth in  
15 the case management statement.

16 (5) To seek a determination that a settlement is a good faith  
17 settlement pursuant to Section 877.6 of the Code of Civil Procedure  
18 and all related authorities. The page limitations and meet and confer  
19 requirements specified in this section shall not apply to these  
20 motions, which may be made on shortened notice. Instead, these  
21 motions shall be subject to other applicable state law, rules of  
22 court, and local rules. A determination made by the court pursuant  
23 to this motion shall have the same force and effect as the  
24 determination of a postfiling application or motion for good faith  
25 settlement.

26 (6) To ensure compliance, on shortened notice, with the  
27 obligation to provide a Statement of Insurance pursuant to  
28 paragraph (2) of subdivision (e).

29 (7) For any other relief appropriate to the enforcement of the  
30 provisions of this section, including the ordering of parties, and  
31 insurers, if any, to the dispute resolution process with settlement  
32 authority.

33 (o) (1) A petition filed pursuant to subdivision (n) shall be filed  
34 in the superior court in the county in which the project is located.  
35 The court shall hear and decide the petition within 10 days after  
36 filing. The petitioning party shall serve the petition on all parties,  
37 including the date, time, and location of the hearing no later than  
38 five business days prior to the hearing. Any responsive papers  
39 shall be filed and served no later than three business days prior to

1 the hearing. Any petition or response filed under this section shall  
2 be no more than three pages in length.

3 (2) All parties shall meet with the dispute resolution facilitator,  
4 if one has been appointed and confer in person or by the telephone  
5 prior to the filing of that petition to attempt to resolve the matter  
6 without requiring court intervention.

7 (p) As used in this section:

8 (1) "Association" shall have the same meaning as defined in  
9 Section 4080.

10 (2) "Builder" means the declarant, as defined in Section 4130.

11 (3) "Common interest development" shall have the same  
12 meaning as in Section 4100, except that it shall not include  
13 developments or projects with less than 20 units.

14 (q) The alternative dispute resolution process and procedures  
15 described in this section shall have no application or legal effect  
16 other than as described in this section.

17 (r) This section shall become operative on July 1, 2002, however  
18 it shall not apply to any pending suit or claim for which notice has  
19 previously been given.

20 (s) This section shall become inoperative on July 1, 2017, and,  
21 as of January 1, 2018, is repealed, unless a later enacted statute,  
22 that becomes operative on or before January 1, 2018, deletes or  
23 extends the dates on which it becomes inoperative and is repealed.

24 6100. (a) As soon as is reasonably practicable after the  
25 association and the builder have entered into a settlement  
26 agreement or the matter has otherwise been resolved regarding  
27 alleged defects in the common areas, alleged defects in the separate  
28 interests that the association is obligated to maintain or repair, or  
29 alleged defects in the separate interests that arise out of, or are  
30 integrally related to, defects in the common areas or separate  
31 interests that the association is obligated to maintain or repair,  
32 where the defects giving rise to the dispute have not been corrected,  
33 the association shall, in writing, inform only the members of the  
34 association whose names appear on the records of the association  
35 that the matter has been resolved, by settlement agreement or other  
36 means, and disclose all of the following:

37 (1) A general description of the defects that the association  
38 reasonably believes, as of the date of the disclosure, will be  
39 corrected or replaced.

1 (2) A good faith estimate, as of the date of the disclosure, of  
2 when the association believes that the defects identified in  
3 paragraph (1) will be corrected or replaced. The association may  
4 state that the estimate may be modified.

5 (3) The status of the claims for defects in the design or  
6 construction of the common interest development that were not  
7 identified in paragraph (1) whether expressed in a preliminary list  
8 of defects sent to each member of the association or otherwise  
9 claimed and disclosed to the members of the association.

10 (b) Nothing in this section shall preclude an association from  
11 amending the disclosures required pursuant to subdivision (a), and  
12 any amendments shall supersede any prior conflicting information  
13 disclosed to the members of the association and shall retain any  
14 privilege attached to the original disclosures.

15 (c) Disclosure of the information required pursuant to  
16 subdivision (a) or authorized by subdivision (b) shall not waive  
17 any privilege attached to the information.

18 (d) For the purposes of the disclosures required pursuant to this  
19 section, the term “defects” shall be defined to include any damage  
20 resulting from defects.

21 6150. (a) Not later than 30 days prior to the filing of any civil  
22 action by the association against the declarant or other developer  
23 of a common interest development for alleged damage to the  
24 common areas, alleged damage to the separate interests that the  
25 association is obligated to maintain or repair, or alleged damage  
26 to the separate interests that arises out of, or is integrally related  
27 to, damage to the common areas or separate interests that the  
28 association is obligated to maintain or repair, the board shall  
29 provide a written notice to each member of the association who  
30 appears on the records of the association when the notice is  
31 provided. This notice shall specify all of the following:

32 (1) That a meeting will take place to discuss problems that may  
33 lead to the filing of a civil action.

34 (2) The options, including civil actions, that are available to  
35 address the problems.

36 (3) The time and place of this meeting.

37 (b) Notwithstanding subdivision (a), if the association has reason  
38 to believe that the applicable statute of limitations will expire  
39 before the association files the civil action, the association may

- 1 give the notice, as described above, within 30 days after the filing
- 2 of the action.
- 3 SEC. 3. This act shall become operative on January 1, 2014.

O